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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 581

GEORGE J. ADAMS AND A. W. KITCHEN, COPARTNERS, ETC., PETITIONERS,

vs.

ANDREW W. MELLON, DIRECTOR GENERAL OF RAILROADS, AND UNION STOCK YARD & TRANSIT COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 21, 1931

CERTIORARI GRANTED JANUARY 25, 1932

(36,395)

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1931.

No.

GEORGE J. ADAMS AND A. W. KITCHEN, CO-PARTNERS TRADING AS ADAMS & KITCHEN, ET AL.,

Petitioners,

vs.

ANDREW W. MELLON, DIRECTOR GENERAL OF RAILROADS, ETC., ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RECORD

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INDEX.

Index to record in United States District Court i
Clerk's certificate 279
Record in United States Circuit Court of Appeals:
Placita 381
Certificate of Clerk of District Court to certain original defendant's exhibits, filed October 31, 1930.. 381
Appearance of counsel for appellants, filed October 31, 1930 382
Appearance of counsel for appellee, Andrew W. Mellon, Director General, filed November 4, 1930.. 383
Appearance of counsel for appellee, Union Stock Yards & Transit Company, filed November 4, 1930 384
Appearance of counsel for appellee, Andrew W. Mellon, Director General of Railroads, as Agent, filed January 24, 1931 385
Stipulation that Court may set cause for argument, filed March 23, 1931 386
Order of March 23, 1931, setting cause for hearing.. 387
Hearing, May 14, 1931 388
Opinion, filed July 27, 1931 389
Judgment, entered July 27, 1931 400
Memo in re filing petition for rehearing, August 15, 1931 405
Proof of service of petition for rehearing, filed August 15, 1931:
Receipt 406
Affidavit of mailing copies 407

Memo in re filing answer to petition for rehearing, August 24, 1931 408
Memo in re filing reply to answer to petition for rehearing, August 27, 1931 408
Order of September 22, 1931, denying petition for rehearing, staying mandate, and that proof of filing of the petition for writ of certiorari in the Supreme Court of the United States be filed 409
Order of November 4, 1931 that original exhibits may be withdrawn and transmitted to the Clerk of the United States Supreme Court 410
Clerk's certificate 411

Order allowing certiorari 413

IN THE

United States Circuit Court of Appeals

For the Seventh Circuit

OCTOBER TERM, A. D. 1930.

No. 4462

GEORGE J. ADAMS AND A. W. KITCHEN, COPARTNERS TRADING AS ADAMS & KITCHEN, ET AL.,

Appellants,

vs.

ANDREW W. MELLON, DIRECTOR GENERAL OF RAILROADS, ETC., ET AL.,

Appellees.

Counsel for Appellants:

MR. FRANKLIN J. STRANSKY,
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Counsel for Appellees:

MR. A. A. McLAUGHLIN,
MR. EDGAR R. HART,
MR. SILAS H. STRAWN,
MR. RALPH M. SHAW,
MR. FRANK M. TOWNER,

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

INDEX.

Placita 1
Praecipe for summons 2
Security for costs 3
Petition, filed Dec. 10, 1928 4
Appearance of counsel for defendant, A. W. Mellon, Director General of Railroads, as Agent, etc. 19
Appearance of counsel for defendant, The Union Stock Yard & Transit Company 20
Stipulation and order extending time for defendant to answer or demur to declaration to Apr. 15, 1929 20-21
Answer of defendant, The Union Stock Yard & Transit Company of Chicago, filed Apr. 5, 1929 21
Answer of A. W. Mellon, Director General of Railroads, as Agent, filed Apr. 8, 1929 30
Order of Oct. 26, 1929, setting cause for trial 45
Order of Jan. 6, 1930 continuing trial 46
Trial . . . . . 46, 56 to 59
Motion of defendant, A. W. Mellon, Director General of Railroads, as Agent, for a directed verdict, filed Jan. 9, 1930 47
Motion of defendant, Union Stock Yard & Transit Co. for a directed verdict, filed Jan. 9, 1930 52
Order of Jan. 17, 1930 taking motions for directed verdict under advisement 58
Opinion by Woodward, J., on motion for directed verdict, filed Jan. 28, 1930 60
Verdict, filed Jan. 28, 1930 77
Judgment, entered Jan. 28, 1930 78
Plaintiffs' motion to vacate certain orders 79
Affidavit of Elwood G. Godman 79
Order of Jan. 31, 1930 setting date for hearing on motion to vacate certain orders 82

Orders continuing hearing on motion to vacate certain orders 82-83
Reasons assigned in support of motion to vacate and set aside certain orders, filed Apr. 11, 1930. 84
Motion to amend petition 86
Exhibit A—Amendment to petition. 102
Order of Apr. 18, 1930, taking motion to vacate certain orders, under advisement 111
Memorandum by Woodward, J., filed July 31, 1930. 112
Order of July 31, 1930 overruling motion to vacate certain orders and overruling motion to amend petition. . 118
Order of Aug. 28, 1930, amending order of July 31, 1930. 119
Order of Sept. 29, 1930, extending time for filing bill of exceptions 120

BILL OF EXCEPTIONS.

Plaintiff's Witness:
Park, Henry R. 216
Defendant's Witness:
Gillis, Thomas H. 294

	Received in evidence at page	Reproduced at page
Plaintiff's Exhibits:		
No. 1—Opinion and decision of the Interstate Commerce Commission, Chicago Live Stock Exchange vs. A. T. & S. F. Ry. Co., et al., decided Feb. 11, 1919	121	121
No. 2—Report and decision of the Interstate Commerce Commission, Chicago Live Stock Exchange vs. A. T. & S. Fe. Ry. Co., et al., decided July 15, 1920	141	141
No. 3—Opinion and decision of the Interstate Commerce Commission, Chicago Live Stock Exchange vs. A. T. & S. F. Ry. Co., et al., decided June 2, 1925	146	147

	Received in evidence at page	Reproduced at page
No. 4—Order of the Interstate Commerce Commission, Chicago Live Stock Exchange vs. A. T. & S. F. Ry. Co. entered Dec. 12, 1927	157	157
No. 5—Order of Interstate Commerce Commission, Chicago Live Stock Exchange vs. A. T. & S. F. Ry. Co. entered May 14, 1928	210	210
No. 6—Order of Interstate Commerce Commission, Chicago Live Stock Exchange vs. A. T. & S. F. Ry. Co. entered Nov. 27, 1928	214	214
Defendant's Exhibits:		
No. 1—Stipulation re: certain facts	243	232-296
No. 2—Complaint filed by Chicago Live Stock Exchange before the Interstate Commerce Commission, Docket No. 9977	243	243
No. 3—Complaint filed by Chicago Live Stock Exchange before Interstate Commerce Commission, Docket No. 12614	257	257
No. 4—Order of Interstate Commerce Commission entered Apr. 8, 1922, re-opening cases for further hearing	267	267
No. 5—Transcript of testimony before Interstate Commerce Commission on Nov. 8, 1917, Docket No. 1118	268	
No. 6—Transcript of testimony before Interstate Commerce Commission, March 13 to 16, 1918, Docket Nos. 9977 and 1118	268	
No. 7—Transcript of testimony before Interstate Commerce Commission, May 20 to 22, 1919, Docket No. 9977	269	
No. 8—Transcript of testimony before Interstate Commerce Commission on July 14, 1921, Docket No. 12614	269	

	Received in evidence at page	Reproduced at page
No. 9—Transcript of testimony before Interstate Commerce Commission on Oct. 3 to 6, 1922, Docket Nos. 9977 and 12614		270
No. 10—Transcript of testimony before Interstate Commerce Commission Oct. 9, 1922, Docket Nos. 9977 and 12614		270
No. 11—Transcript of testimony before Interstate Commerce Commission Nov. 6 to 9, 1922, Docket Nos. 9977 and 12614		271
No. 12—Certain documents offered before Interstate Commerce Commission at hearings March 13 to 16, 1918 (52nd Annual Report of U. S. Y. & T. Co., etc.)		271
No. 13—Act of Incorporation of U. S. Y. & T. Co.		272
No. 14—Minutes of meeting of Board of Directors of U. S. Y. & T. Co. on Mar. 2, 1865		272
No. 15—Minutes of meeting of Board of Directors of U. S. Y. & T. Co. on Mar. 4, 1865		273
No. 16—Minutes of meeting of Board of Directors of U. S. Y. & T. Co. on Jan. 17, 1866		273
No. 17—Minutes of meeting of Board of Directors of U. S. Y. & T. Co. on Oct. 18, 1867		273
No. 18—Lease dated Dec. 15, 1897 of railroad of Stock Yds. Co. to Chgo. and Indiana State Line Railroad		274
No. 19—Agreement of consolidation between Chgo. Hammond & Western R. R. Co. and Chgo. & Indiana State Line R. R. Co., dated Jan. 1, 1898		274
No. 20—Lease in perpetuity from U. S. Y. & T. Co. to Chgo. Junction Ry. Co.		275
No. 21—Copy of account sales issued by Nat. Live Stock Comm. Co. on cattle sold Dec. 17, 1917		275

	Received in evidence at page	Reproduced at page
No. 22—Santa Fe waybill		276
No. 23—Photograph of loading and unloading of stock at Union Stock Yards		276
No. 24—Photograph of unloading facilities of Stock Yards		277
No. 25—Airplane picture of premises of U. S. Y. & T. Co.		277
No. 26—Blue print showing unloading docks		278
No. 27—Print map showing Chicago Junction Ry. and connections with line-haul carriers into the Union Stock Yards		278
No. 28—Map of U. S. Y. & T. Co. property and railroads surrounding it		279
No. 29—Statement of labor cost of loading and unloading live stock at the Stock Yards in 1917, 1918 and part of 1919		279
No. 30—Letter, Apr. 25, 1919, U. S. Y. & T. Co. to Winston, Strawn & Shaw		280
No. 31—Statement of cars received at the Stock Yards April 23 to 30, 1919		280
No. 32—Statement of cost of loading and unloading live stock at Stock Yards in March, 1919		281
No. 33—Statement of cost of loading and unloading live stock at Stock Yards in April, 1919		281
No. 34—Copy of 2 bill stubs issued by I. C. R. R. showing charges on shipment		281
No. 35—Copy of rate advice 901 issued by U. S. Railroad Administration on Nov. 25, 1918		282
No. 36—Blank headed "Reparation, Chicago Live Stock Exchange Loading & Unloading Case"		282

	Received in evidence at page	Reproduced at page
No. 37—Box and contents (several thousand separate sheets showing shipments)	283	
No. 38—Assignment dated Feb. 23, 1918, Bowles to Clark	285	
No. 39—Bill of sale, dated April 7, 1919, Paris to Boothroyd	286	
No. 40—Letter, Aug. 23, 1920, Smith to "Friend Shute"	286	
No. 41—Bundle of papers containing names of shippers who made the shipments to the Stock Yards involved in this case	287	
No. 42—Copy of all contracts between Chgo. Junction Ry. Co. and line-haul carriers pertaining to demurrage charge made by Chgo. Junction Ry. Co., etc.	288	
No. 43—Statement showing receipts of cars of live stock at Stock Yards between 6 P. M. and 6 A. M. week ending Mar. 8, 1919	288	
No. 44—Copy of freight rate authority 2770 issued by Director General of Railroads, dated Nov. 16, 1918	289	289
No. 45—Rules of practice of Interstate Commerce Commission on Mar. 20, 1916	291	
General Order No. 1, dated Dec. 29, 1917	292	293
Motion of defendant, U. S. Y. & T. Co. for a directed verdict		302
Motion of defendant, A. W. Mellon, Director General, as Agent, for a directed verdict		304
Charge to the jury		310
Verdict		310
Reference to judgment, prayer for appeal, etc.		311
Motion to vacate and set aside certain orders		311
Affidavit of Elwood G. Godman		312
Reasons assigned in support of motion		315

Motion to amend petition 318
Amendment to petition 334
Reference to denial of motion to vacate orders and of motion to amend petition 343
Reference to order fixing time for filing appeal bond and bill of exceptions, etc. 343
Certificate of judge 344

Order of Oct. 24, 1930, approving bill of exceptions..... 344
Order of Oct. 24, 1930, that certain exhibits be separately certified to the U. S. Circuit Court of Appeals..... 345
Assignment of errors 346
Bond on appeal 361
Order of Sept. 22, 1930, approving bond..... 368
Order of Sept. 22, 1930, extending time for docketing cause in U. S. Circuit Court of Appeals..... 369
Notice of filing amended praecipe 369
Amended praecipe for record 370
Certificate of clerk 372
Citation 372
Stipulation re: printing record 378

Order allowing certiorari..... 413

1 Pleas in the District Court of the United States for the Placit
Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Charles E. Woodward, District Judge of the United States for the Northern District of Illinois on Twenty-eighth day of January, in the year of our Lord one thousand nine hundred and Thirty, being one of the days of the regular December Term of said Court, begun Monday, the Sixteenth day of December, and of our Independence the 154th year.

Present:

Honorable Charles E. Woodward.
H. C. W. Laubenheimer, U. S. Marshal.
Charles M. Bates, Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES

Northern District of Illinois

Eastern Division.

George J. Adams and A. W. Kitchen, co-partners trading as Adams & Kitchen *et al.*,
Plaintiffs,
vs.
Andrew W. Mellon, Director General of Railroads, as Agent, *et al.*,
Defendants.
} No. 37517.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Praecipe in the above-entitled cause, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 8th day of December, 1928.

3 And on, to wit, the 8th day of December, 1928 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court a certain Praecipe in words and figures following, to wit:

4 DISTRICT COURT OF THE UNITED STATES OF AMERICA

Northern District of Illinois

Eastern Division

November Term, A. D. 1928

George J. Adams and A. W. Kitchen, copartners trading as Adams & Kitchen, *et al.*,

Plaintiffs,

vs.

Andrew W. Mellon, Director General of Railroads, as agent of the President under Section 206 of the Transportation Act of 1920, against whom suits may be brought arising out of the operation, during the period of Federal Control, of the railroads and systems of transportation of the following carriers:

The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Chesapeake & Ohio Railway Company of Indiana; The Chicago and Alton Railroad Company; and William W. Wheelock and William G. Bierd, Receivers; Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis and Louisville Railway Company; Chicago Junction Railway Company; Chicago, Milwaukee and St. Paul Railway Company; and H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers; The Chicago, Rock Island and Pacific Railway Company; Chicago, Terre Haute & Southeastern Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Grand Trunk Western Railway Company; Illinois Central Railroad Company; Indiana Harbor Belt Railroad Company; The Michigan Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; New York Central Railroad Company; The New York Chicago and St. Louis Railroad Company; The Pennsylvania Railroad Company; Pere Marquette Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Toledo, St. Louis & Western Railroad Company; and J. Frank Johnson and Harry A. Dunn, Receivers; and Wabash Railway Company; and Union Stock Yard and Transit Company of Chicago,

Defendants.

In Law.
Damages, $400,000.

The Clerk of said Court will issue a summons in said cause to said defendants, in a plea of trespass on the case to the damage of said plaintiff in the sum of Four Hundred Thou-

sand Dollars, direct the same to the United States Marshal for said District to execute, and make it returnable to the February Term of said Court, 1928.

Dated this 8th day of December, A. D. 1928.

SIMS, GODMAN & STRANSKY,
Plaintiff's Attorneys.

To Charles M. Bates, Clerk.

6 And on, to wit, the 8th day of December, 1928 came the Plaintiffs by their attorney and filed in the Clerk's office of said Court a certain Security for Costs in words and figures following, to wit: Filed De 1928.

7 * * * (Caption) * *

I enter myself as security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this Court; and in default of payment by the Plaintiffs of any cost ordered or adjudged to be paid by Plaintiffs hereby agree and stipulate that execution may issue against my property for all costs not exceeding two hundred dollars taxed against Plaintiffs.

Dated this 8th day of Dec., A. D. 1928.

EDWARD J. McLAUGHLIN
Residence 7841 S. Euclid Ave.
Chicago, Illinois

Acknowledged before me this 8th day of December, 1928.

CHARLES M. BATES,
Clerk.

8 And on, to wit, the 10th day of December, 1928 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

9 • • (Caption) • •

PETITION.

To the Honorable Judge of said Court:

1. The plaintiffs named in paragraph 2 hereof bring this action against Andrew W. Mellon, Director General of Railroads as Agent, The Union Stock Yard and Transit Company, as defendants and the parties named as defendants in paragraph 3 hereof to recover as damages certain amounts, hereinafter specifically designated, paid by the plaintiffs to the defendants named, which amounts plaintiffs allege were illegally collected by the defendants for the services of loading and unloading shipments of live stock made or received by the plaintiffs at the Union Stock Yards, Chicago, Illinois, over the lines of railroad and transportation systems of the railroad companies and corporations hereinafter named, which action is brought against said Director General of Railroads as Agent, the Union Stock Yards and Transit Company, and the other defendants named in paragraph 3 hereof pursuant to the provisions of Section 206 of the act of Congress known as the Transportation Act, 1920.

(2) The following named plaintiffs are, and each of them is, named in an order of the Interstate Commerce Commission entered the 12th day of December, 1927, as being entitled to receive from the defendants hereinafter named the amounts respectively set forth in said order of the Commission, a copy of which is hereto attached as Exhibit "A" and made a part hereof to the same extent and as fully as though the same were here set out:

The following named are the plaintiff's herein and are the parties entitled to receive the damages awarded by the Interstate Commerce Commission:

Geo. J. Adams and A. W. Kitchen, co-partners trading as Adams & Kitchen.

John G. Adler and Alfred E. Adler, co-partners trading as Adler Sons & Company.

Alexander, Conover and Martin, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

John A. Babcock, an individual trading as John A. Babcock & Company.

Fred L. Heyne and E. H. Baker, co-partners trading as Baker, Heyne & Company.

W. A. Peterson, trading as Bacon, Peterson & Company.

Bowles Live Stock Commission Company, a corporation organized and existing under the laws of the State of West Virginia with its principal place of business at Chicago in the State of Illinois.

E. C. Brown and Seth B. St. John, co-partners trading as Brown-St. John Company.

Thos. H. Brown.

George M. Brownson and J. L. Ettlinger, co-partners trading as Brownson & Ettlinger.

Byers Brothers Company, a corporation organized and existing under the laws of the State of Missouri with its principal place of business at Chicago in the State of Illinois.

Wm. B. Swiney, Chas. M. Swiney and Thos. E. Swiney, co-partners trading as Swiney Bros., successors to Bunker & Swiney.

J. B. Cahill, trading as J. B. Cahill & Company.

Central Live Stock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Ernest Clark and Louis Armbrecht, co-partners trading as Clark, Armbrecht & Company.

E. A. Clark, trading as Clark, Bowles & Company.

John Clay, John G. Forrest, C. A. Kleman, F. H. Connor and C. L. Robinson, co-partners trading as Clay, Robinson & Company.

James R. Clegg, an individual trading as James R. Clegg & Company.

A. M. Henneberry and N. W. Cochran, co-partners trading as Cochran & Henneberry.

W. P. Collings, trading as W. P. Collings & Son.

Conklin Bros. Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

H. D. Copeland & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

J. M. Corrick.

J. F. Cross and H. G. Sommers, co-partners trading as Cross, Sommers & Company.

A. B. Daniels.

P. T. Dolan and Fred Ludeman, co-partners trading as Dolan & Ludeman.

J. M. Doud & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

S. S. Driver, an individual trading as S. S. Driver & Company.

Chas. R. Beason and P. E. Moore, co-partners trading as Drovers Commission Company.

J. W. Eastland, an individual trading as J. W. Eastland & Company.

Guy Wheeler and T. K. Polley, co-partners trading as Emmett, Wheeler & Polley.

E. H. Kuenster, surviving partner of co-partnership of Erwin & Kuenster.

Evans, Snider, Buel Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Filler Wilson & McClelland, a corporation organized and existing under the laws of the State of Illinois with its
11 principal place of business at Chicago in the State of Illinois.

O. D. Freeland and C. M. Godfrey, co-partners trading as Freeland & Godfrey.

Fred Freeman an individual trading as Fred Freeman & Company.

P. J. Fitzgerald and G. S. Freeman, copartners trading as Freeman, Fitzgerald & Company.

Wm. Gentleman, A. M. Gentleman, C. F. Gentleman and G. J. Gentleman, copartners trading as Wm. Gentleman & Sons.

S. G. Gillogly, R. E. Gillogly, F. D. Gillogly and F. T. Gillogly, copartners trading as Gillogly & Company.

Chas. E. Harding, trading as Chas. E. Harding & Company.

Hefner Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Geo. F. Hogan, trading as Geo. F. Hogan & Company.

A. Warheimer, E. H. Ingwerson, J. H. Ingwerson, Dan R. Ingwerson, D. C. Mosier and A. C. Barroff, co-partners trading as Ingwerson Bros.

Iowa Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with

its principal place of business at Chicago in the State of Illinois.

I. W. Knettle and Edwin Knettle, copartners trading as Knettle Bros.

Knollin Sheep Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

E. H. Kuenster, an individual trading as Kuenster Livestock Commission Company.

A. J. Laberthe.

L. S. Larrison an individual trading as L. S. Larrison and Company.

Lee Live Stock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

F. C. Ludeman, an individual trading as F. C. Ludeman & Company.

McCausland, Hoag & Vaughn, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Wm. Mahoney.

J. P. Maley and Harry L. Carpenter, copartners trading as Maley, Carpenter & Company.

John P. Martin, James G. Martin, George E. Martin and Wm. S. Burmister, copartners trading as Martin Bros. & Company.

Miller White & Woods, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

P. T. Dolan, trading as Miller & Dolan.

Frank R. Mullen, trading as Mullen Commission Company.

Robert S. Murray, trading as Murray & McDowell.

B. F. Hubbird, trading as Minteer Hubbird & Company.

National Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Northwestern Livestock Commission, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

G. W. Nixon, C. S. Horn and W. H. Chisholm, copartners trading as Nixon, Horn & Chisholm.

North American Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Silas Palmer and W. H. Palmer, copartners trading as Silas Palmer & Son.

T. B. Vincent and C. H. Boothroyd, copartners trading as Paris Commission Company.

W. C. Patterson, trading as John Patterson & Son.

W. A. Peterson and Wm. Turnbull, copartners trading as Peterson, Turnbull & Company.

J. H. Piatt, trading as Abner Piatt & Company.

Thos. K. Polley, trading as Thos. K. Polley & Company.

R. H. Pritchard, trading as Pritchard Commission Company.

Chas. R. Rice and Oscar A. Rice, copartners trading as Rice Bros.

J. B. Roach and W. P. Roach, copartners trading as Roach Livestock Commission Company.

Rosenbaum Brothers & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

F. W. Sheldon trading as F. W. Sheldon & Company.

W. Harry Sherwood and Russell H. Sherwood, copartners trading as Sherwood & Son.

J. Paul Shinn, Chas. H. Moberly and I. O. Fry, copartners trading as Shinn, Fry & Moberly, successors to Shinn Fry & Company.

James G. Shutter.

W. R. Smith, J. C. Eastes and John Smith, copartners trading as W. R. Smith & Son.

T. B. Stafford and A. B. Stafford, copartners trading as Stafford Bros.

Standard Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

A. F. Starrett, Jr., O. A. Mathison, A. C. Granger and M. E. Peschong, copartners trading as Starrett, Mathison & Company.

Chas. H. Stephens and J. A. Goble, copartners trading as Stephens & Goble.

A. F. Stewart, trading as A. F. Stewart & Company.

J. E. Strader and J. L. Strader, copartners trading as Strader Bros.

J. J. Sullivan and J. C. Sullivan, copartners trading as Sullivan Commission Company.

A. Gilmore, C. L. Swanson and C. J. Castenholz, copartners trading as Swanson, Gilmore and Castenholz.

Harry Thompson and C. N. Ball, copartners trading as Thompson & Ball.

13 Thos. Tipton, E. M. Steck and W. P. Herrick, copartners trading as Tipton, Steck & Herrick.

D. L. Trout and F. L. Trout, copartners trading as Trout Livestock Commission Company.

G. B. Van Norman, an individual trading as G. B. Van Norman & Company.

Van Norman Lawler & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

W. H. Walter, trading as Walter Bros.

A. A. Walters, C. A. Dunbar and J. H. Dunbar, copartners trading as Walter & Dunbar.

L. B. Werden.

W. W. Wilson and Chas. A. Wilson, copartners trading as W. W. Wilson & Company.

Jet Wimp, trading as Jet Wimp & Company.

Kay Wood and Chas. A. Wood, copartners trading as Wood Bros.

Curtis A. Wood and Walter R. Wood, copartners trading as Curtis A. Wood & Company.

L. B. Yancey.

W. E. Young, trading as W. E. Young & Company.

(3) The plaintiffs and each of them allege as follows:

That the defendant The Union Stock Yard & Transit Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at Chicago in said State of Illinois.

That the defendant Andrew W. Mellon, Director General of Railroads, as agent, is an officer of the United States, designated by the President, pursuant to the provisions of section 206 of the Transportation Act of 1920, as amended, as agent for the President, against whom actions at law may be brought on causes of action arising out of the possession, use or operation by the President, of the railroads and systems

of transportation of the following named railroads: The Atchison, Topeka & Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Chesapeake and Ohio Railway Company of Indiana; The Chicago and Alton Railroad Company; and William W. Wheelock and William G. Bierd, Receivers; Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago Junction Railway Company; Chicago, Milwaukee and St. Paul Railway Company, and H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers; The Chicago, Rock Island and Pacific Railway Company; Chicago, Terre Haute & Southeastern Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Grand Trunk Western Railway Company; Illinois Central Railroad Company; Indiana Harbor Belt Railroad Company; The Michigan Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; New York Central Railroad Company, New York, Chicago & St. Louis Railroad Company; The Pennsylvania Railroad Company; Pere Marquette Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and
14 Harry A. Dunn, Receivers; and Wabash Railway Company, all of which railroads and systems of transportation were operated and controlled by the predecessors in office of said Andrew W. Mellon during the period of Federal control of railroads, to-wit, December 28, 1917, to March 1, 1920. That all of said railroad companies and corporations last named have and during said period of Federal control had systems of transportation and roads running through the Eastern Division of the Northern District of Illinois, with the exception of The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and Harry A. Dunn, Receivers, which railroad company is now a part of the system of the New York, Chicago & St. Louis Railroad Company, and which system has a road running through the Eastern Division of the Northern District of Illinois; that this court has jurisdiction of this cause of action under and pursuant to the terms of Section 206 of the act of Congress known

as the Transportation Act, 1920, and that this is a cause of action within the meaning of said section 206 over which this court would have had jurisdiction had it arisen against said railroad companies and corporations operating said railroads and systems of transportation but for Federal control.

(4) The Federal control of railroads terminated on February 29, 1920, and that the President of the United States, by proclamation dated February 28, 1920, did, pursuant to the provisions of section 206-a of the Transportation Act of 1920, designate Walker D. Hines Director General of Railroads, as the agent provided for in said section; and by proclamation dated May 18, 1920, did designate, as successor to the said Walker D. Hines, John Barton Payne, Director General of Railroads, as the agent provided for in said section; and by proclamation dated March 28, 1921, did designate as successor of the said John Barton Payne, James C. Davis, Director General of Railroads as the agent provided for in said section; and by proclamation dated December 14, 1925, did designate as successor to James C. Davis, the defendant Andrew W. Mellon, as the agent provided for in said section.

(5) That said defendants and the predecessors in office of said Mellon were, at all times during the period covered by this petition, common carriers for hire, engaged in the transportation of commerce, and as such, subject to the provisions of the act of Congress entitled "An Act to Regulate Commerce" approved February 4, 1887, and all acts supplemental thereto or amendatory thereof, including the "Federal Control Act" approved March 21, 1918.

(6) That this is a civil suit for damages by the plaintiffs against defendants for a violation of the Act of Congress known as the "Act to Regulate Commerce," as amended upon the facts in this pleading set forth for the sum of One hundred forty thousand and one dollars and twenty-five cents ($140,001.25) damages, and a reasonable attorney's fee, and that this court has jurisdiction of the parties and of the subject matter by virtue of the provisions of the Act to Regulate Commerce as amended and Transportation Act, 1920, as amended.

(7) Plaintiffs further allege that between December 28, 1917, and March 1, 1920, they shipped and paid charges thereon over the lines of the defendants from and to Union Stock Yards, Chicago, Illinois, numerous carloads of live stock, to-wit, five hundred sixty thousand and five carloads, (the date

of delivery, car number, waybill number, originating station, consignor, consignee, and amount of reparation claimed, being more specifically set forth in statements prepared in accordance with a ruling of the Commission, filed by plaintiffs with, and now in possession of the Interstate Commerce Commission, and which are too voluminous to insert herein and which would make this petition too extended and cumbersome but plaintiffs now make profert of the said statements) on which defendants unlawfully and unreasonably collected and received unlawful and unreasonable charges of 25 cents per carload as more fully appears in the order of the Interstate Commerce Commission hereto attached and marked "Exhibit A" to which reference is now made and which is made a part hereof as fully as though the same were here set out on to-wit, 560,005 carloads of live stock for loading or unloading same, aggregating one hundred forty thousand and one dollars and twenty-five cents ($140,001.25) in violation of the duty of defendants in that respect to collect only lawful and reasonable charges as required by the Act to Regulate Commerce as amended.

(8) That the unlawful and unreasonable charge herein complained of arose as follows:

That prior to May 21, 1917, there was in effect a tariff published and filed with the Interstate Commerce Commission by defendant, The Union Stock Yard and Transit Company, and which provided that charges of 25 cents for unloading each car of live stock and 50 cents for loading each car of live stock would be assessed by the defendant, The Union Stock Yard and Transit Company, on all cars of live stock loaded or unloaded by it at Union Stock Yards, Chicago, Illinois; that there was also in effect another tariff, published and filed with the Interstate Commerce Commission to which the railroad companies, the lines of which were operated by the predecessors in office of defendant, Andrew W. Mellon, as hereinabove set forth, were parties, and which provided that the sum of 25 cents for unloading each car of live stock and 50 cents for loading each car of live stock would be absorbed and paid by the railroad companies to The Union Stock Yard and Transit Company on all cars of live stock loaded or unloaded by that company at Union Stock Yards, Chicago, Illinois; that said latter tariff was Agent L. A. Lowry's Tariff 20-J, I. C. C. No. 37. That effective May 21, 1917, the defendant, The Union Stock Yard and Transit Company filed with the Interstate Commerce Commission its tariff I. C. C. No. 2,

wherein it increased said charges from 25 cents per car for unloading to 50 cents per car for unloading, and from 50 cents per car for loading to 75 cents per car for loading. That no tariff was filed whereby said railroad companies hereinabove referred to absorbed or paid said increase in said charges, and shippers and receivers of live stock, including plaintiffs, were compelled to and did pay the defendant, The Union Stock Yard and Transit Company, and the railroad companies hereinabove referred to, and effective with Federal control as aforesaid, defendants herein and the predecessors in office of said Mellon, an amount in excess of the former tariff charge for each car of live stock unloaded or loaded by The Union Stock Yard and Transit Company, as more specifically set forth in said statements as aforesaid, the amount in each instance being the difference between the amount of 25 cents for unloading each car, which amount the predecessors in office of the defendant, Andrew W. Mellon, during Federal control, absorbed and the amount of 50 cents for unloading each car, and the difference between the amount of 50 cents likewise absorbed for loading each car and 75 cents charged for loading each car.

16 (9) That effective September 1, 1917, the defendant, The Union Stock Yard and Transit Company, filed with the Interstate Commerce Commission a tariff canceling said The Union Stock Yard and Transit Company Tariff I. C. C. No. 2, and this new tariff was suspended from time to time by the Interstate Commerce Commission.

(10) Plaintiffs further allege that during the said period from December 28, 1917, to March 1, 1920, the stockyards of the defendant, The Union Stock Yard and Transit Company, were the terminals of the predecessors in office of the defendant, Andrew W. Mellon, in each of the shipments of live stock set forth in said statements as aforesaid.

(11) Plaintiffs further allege that it was the duty of the predecessors in office of the defendant, Andrew W. Mellon, and The Union Stock Yard and Transit Company in each of the shipments set forth in said statements as aforesaid, to load or unload, as the case might be, said live stock at the Union Stock Yards, Chicago, Illinois; that the loading and unloading of said live stock which was performed by defendant, The Union Stock Yard and Transit Company was part of the transportation of said live stock; that the collection of separate charges by defendants from plaintiffs, as aforesaid, was unlawful and unreasonable and the charges so

collected were unlawful and unreasonable charges in violation of the Interstate Commerce Act, as more fully and in detail appears in the said order of the Interstate Commerce Commission, a copy of which is hereto attached and marked "Exhibit B," and which is now referred to and made a part hereof as fully as though the same were here set out, to the damage of the plaintiffs in the amounts so paid.

(12) Plaintiffs further allege that upon the filing of the Union Stock Yard & Transit tariff I. C. C. No. 2, which was to be effective September 1, 1917, as aforesaid, there was filed with the Interstate Commerce Commission formal protest. That subsequent to the filing of said protest, said tariff was suspended from time to time by the Interstate Commerce Commission, and the matter set down for hearing by the Interstate Commerce Commission under Investigation and Suspension Docket No. 1118.

(13) That on or about October 2, 1917, the Chicago Live Stock Exchange, on behalf of its members and others engaged in the buying, selling and shipping of live stock at the Chicago Illinois stock yards, including the plaintiffs, filed a complaint with the Interstate Commerce Commission alleging and charging said loading and unloading charges to be unlawful, unjust and unreasonable under the Interstate Commerce Act; that the said Interstate Commerce Commission docketed said complaint under Interstate Commerce Commission Docket No. 9977, and the corporate carriers made defendants therein who are the same corporate carriers and railroads named herein filed answer thereto and the issues were duly made up; that said Docket 9977 and Investigation and Suspension Docket 1118 were consolidated for hearing, and that after full hearing thereon on or about February 11, 1919, the Interstate Commerce Commission issued its report and decision in said cause dismissing said complaint, said report and decision being reported in 52 I. C. C. 209, attached hereto as "Exhibit C" and made a part hereof as though fully set forth at this place.

(14) That on or about April 14, 1919, upon petition of the complainant in said complaint Interstate Commerce Commission Docket 9977 for rehearing and application of the complainant to amend its complaint by making the Di-
17 rector General of Railroads a party defendant, the Interstate Commerce Commission issued an order in said Docket 9977 and Investigation and Suspension Docket No. 1118 in words and figures as follows:

"Supplemental Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of April, A. D. 1919.

No. 9977

Chicago Live Stock Exchange

vs.

The Atchison, Topeka & Santa Fe Railway Company *et al.*
Investigation and Suspension Docket No. 1118.

In the Matter of the Investigation and Suspension of Live Stock Loading and Unloading Charges at Chicago, Ill.

Upon further consideration of the records in the above entitled proceedings, of petition for rehearing filed by the Chicago Live Stock Exchange and Union Stock Yard & Transit Company, and of application of the Chicago Live Stock Exchange to amend its complaint by making the Director General of Railroads a party defendant;

It Is Ordered, That these proceedings be, and they are hereby, reopened for further hearing, on the question of the amount of the loading and unloading charges for live stock at the Chicago stock yards, and the amount of such charges, if any, that should be imposed upon shippers of live stock, or should be absorbed by the defendants and whether the Chicago Stock Yards are terminals of the Chicago Junction Railway Company, and whether the tariff arrangements between the Union Stock Yards & Transit Company and the other defendants with respect to the delivery and handling of live stock at the Union Stock Yards in Chicago are in compliance with the act.

It Is Further Ordered, That the petition of the Union Stock Yard & Transit Company, so far as it seeks a reopening of the case for the purpose of reconsideration of the finding that it is a common carrier, be, and it is hereby, denied.

It Is Further Ordered, That Walker D. Hines, Director General of Railroads, be, and he is hereby, made an additional party respondent herein.

It Is Further Ordered, That a copy of this order be served upon each of the parties to these proceedings.

And It Is Further Ordered, That these proceedings be, and they are hereby, assigned for further hearing on May 20,

1919, ten o'clock a. m., at United States Court Room, Chicago, Ill., before Examiner Gerry.

By the Commission:

GEORGE B. McGINTY,
(Seal) *Secretary.*"

And thereafter said causes were reheard. The Director General was duly represented and took an active part in said proceedings. The said Interstate Commerce Commission, on or about July 15, 1920, issued its report on further hearing, reported in 58 I. C. C. 164, and found that the said unloading and loading charges were unlawful and in violation of the Interstate Commerce Act, said decision and report being attached hereto marked "Exhibit B" and made a part hereof to which reference is now made as though the same were fully set forth at this point.

(15) That the cause of action herein alleged against the defendants accrued between the dates of December 28, 1917, and February 28, 1920, and that within two years after December 28, 1917, the plaintiffs herein filed with the Interstate Commerce Commission their complaint for the recovery of damages, on to-wit, June 16, 1919, in compliance with the provisions of the Act to Regulate Commerce as amended. That, upon permission of the Interstate Commerce Commission, and without objection from the defendants herein,
18 all of whom were represented, counsel for the complainant in Docket No. 9977, on or about June 16, 1919, filed with the Interstate Commerce Commission, for the purpose of making them parties of record, a list of shippers upon whose behalf reparation was prayed and sought in said Docket No. 9977, said list containing, among others, the names of the plaintiffs herein; said list was duly registered and accepted by the Commission, and in its decision reported in 58 I. C. C. 164, "Exhibit B" hereto, the said Commission on July 15, 1920, found that the parties so made of record had been damaged by the assessment and collection of the loading and unloading charges hereinbefore described in the amount of such charges paid by them, and were entitled to reparation with interest from the date of the payment of such charges.

(16) That on or about February 25, 1921, the said Chicago Live Stock Exchange, on behalf of its members and other shippers of live stock to and from the stock yards at Chicago, Illinois, as named in its said complaint and in appendix A attached thereto, filed a complaint with the Interstate Com-

merce Commission against certain corporate carriers and against the defendants herein again alleging said loading and unloading charges to be unlawful, unjust and unreasonable and in violation of the Interstate Commerce Act and of the Federal Control Act, and the said Interstate Commerce Commission docketed said complaint under Interstate Commerce Commission Docket 12614. The defendants filed answers thereto and the issues were duly made up.

(17) The plaintiffs herein were named in the complaint in said Docket No. 12614 and/or appendix A attached thereto, and the said Interstate Commerce Commission thereupon held a public hearing at which evidence was taken and heard in said cause and further hearing in said Docket 9977, and after said hearing, and in all things proceeding legally and in accordance with the provisions of the Interstate Commerce Act, on or about June 2, 1925, issued its consolidated decision and report in said causes, in which it found that the loading and unloading charges above referred to and described were unjust and unreasonable, and that the plaintiffs herein were entitled to reparation with interest on account of the collection by the defendants herein of said unjust and unreasonable charges. Said decision and report is reported in 100 I. C. C. 266, and a copy thereof is attached hereto marked "Exhibit D" and made a part hereof as though fully set forth at this point.

(18) That as directed by the said reports and decisions of the Interstate Commerce Commission, attached hereto and made a part hereof as Exhibits B and D respectively, the statements hereinbefore described of shipments made by plaintiffs during the aforesaid period, on which defendants had collected charges at rates alleged by plaintiffs and found by the Interstate Commerce Commission to be unjust and unreasonable, were submitted to the Interstate Commerce Commission.

(19) That thereafter the said Interstate Commerce Commission issued its reparation order under date of December 12, 1927, said reparation order being attached hereto and marked "Exhibit A", and made a part hereof to the same extent as though the same were here set out.

(20) That on May 14, 1928, the Interstate Commerce Commission issued its Supplemental Report and order in said cause (144 I. C. C. 175), said report and order being attached hereto marked "Exhibit E" and made a part hereof as though fully set forth at this point.

(21) That on November 27, 1928, the Interstate Commerce Commission issued its further order in said cause, said order being attached hereto marked "Exhibit F" and made a part hereof as though fully set forth at this point.

19 (22) That the said order of the Interstate Commerce Commission directing the said defendants therein and who are named herein to pay the aforesaid damages to plaintiffs was duly served upon the defendants herein, but though often requested, the said defendants have failed and refused, and still fail and refuse to pay the said sums, or any part thereof to the plaintiffs; to the damage of the said plaintiffs in the sum of One hundred forty thousand and one dollars and twenty-five cents ($140,001.25) with interest, as more specifically set forth in the copy of said reparation order attached hereto as "Exhibit A" and in addition thereto a reasonable attorney's fee; Wherefore by reason of the premises the defendants have become and are indebted to the plaintiffs in the said sum of One hundred forty thousand and one dollars and twenty-five cents ($140,001.25) and interest thereon at six per cent per annum and in addition thereto a sum of money as a reasonable attorney's fee as provided by statute and the plaintiffs, therefore, pray judgment against the defendants in the sum of One Hundred forty thousand one dollars and twenty-five cents ($140,001.25) with interest thereon at six per cent per annum together with a reasonable attorney's fee as aforesaid, to be taxed and collected as part of the costs of the suit as authorized by law.

SIMS GODMAN & STRANSKY,
Illinois Merchants Bank Building
Chicago, Illinois
Attorneys for Plaintiffs.

EDWIN W. SIMS,
ELWOOD G. GODMAN,
FRANKLIN J. STRANSKY,
C. R. HILLYER,
Of Counsel.

December 8, 1928.

20-76 * * * EXHIBIT A * * (Omitted per stipulation filed November 10, 1930. See Plaintiffs' Exhibit 4, Bill of Exceptions.)

77-79 * * EXHIBIT B * * * (Omitted per stipulation filed November 10, 1930. See Plaintiffs' Exhibit 2, Bill of Exceptions.)

80-88 * * * EXHIBIT C * * * (Omitted per stipulation filed November 10, 1930. See Plaintiffs' Exhibit 1, Bill of Exceptions.

89-93 * * * EXHIBIT D * * * (Omitted per stipulation filed November 10, 1930. See Plaintiffs' Exhibit 3, Bill of Exceptions.)

94-95 * * * EXHIBIT E * * * (Omitted per stipulation filed November 10, 1930. See Plaintiffs' Exhibit 5, Bill of Exceptions.)

96-97 * * * EXHIBIT F * * * (Omitted per stipulation filed November 10, 1930. See Plaintiffs' Exhibit 6, Bill of Exceptions.)

98 And on, to wit, the 22nd day of January, 1929 came the Defendant by his attorneys and filed in the Clerk's office of said Court their certain Appearance in words and figures following, to wit:

99 * * (Caption) * *

I hereby enter the appearance of Andrew W. Mellon Director General of Railroads, as Agent, etc. defendant, and myself as his attorneys in the above-entitled cause.

EDGAR R. HART,
M. G. DE QUENDO &
A. A. MCLAUGHLIN,
Said Defendant's Attorney.

30. 100 And on, to wit, the 30th day of January, 1929 came the Union Stock Yards & Transit Company, a corporation by its attorneys and filed in the Clerk's office of said Court their certain Appearance in words and figures following, to wit:

101 * * (Caption) * *

APPEARANCE.

We hereby enter the appearance of The Union Stock Yard and Transit Company, a corporation, defendant in the above entitled cause and that of ourselves as its counsel.

WINSTON, STRAWN & SHAW
Attorneys for said defendant.

102 And on, to wit, the 30th day of January 1929 came the parties by their attorneys and filed in the Clerk's office of said Court a certain Stipulation in words and figures following, to wit:

103 * * (Caption) * *

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the time of defendant in which to file an answer in the above entitled cause, shall be extended, subject to the approval of the court, up to and including the 15th day of April, 1929.

SIMS, GODMAN & STRANSKY
Attorneys for Plaintiffs.

A. A. McLAUGHLIN
EDGAR L. HART
M. G. DE QUENDO
WINSTON, STRAWN & SHAW
Attorneys for Defendants.

104 And afterwards, to wit, on the 30th day of January 1929, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable George A. Carpenter District Judge, appears the following entry, to wit:

105 * * (Caption) * *

Wednesday, January 30, 1929.

Present: Honorable George A. Carpenter, Judge of said Court.

On stipulation of the parties to this suit filed herein It Is Ordered that the time within which the defendant is to plead answer or demur to the plaintiffs' Declaration filed in said cause be and the same is hereby extended to and including April 15, A. D. 1929.

106 And on, to wit, the 5th day of April, 1929, came the Union Stock Yard & Transit Company of Chicago by its attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit: Filed A 1929

107 * * (Caption) * *

ANSWER OF THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, DEFENDANT HEREIN.

Now comes The Union Stock Yard and Transit Company of Chicago, defendant herein, and for answer to the petition of plaintiffs filed herein, says:

1. Answering the allegations of paragraph 1 of said petition, this defendant denies that the plaintiffs listed in said paragraph paid to this defendant any amounts because of the service of loading and unloading shipments of live stock made or received by the plaintiffs at the Union Stock Yards, in Chicago, Illinois, and denies that any such amounts were illegally collected or received by this defendant for or on account of said service.

2. Answering the allegations of paragraph 2 of said petition, this defendant admits the entry of an order by the Interstate Commerce Commission on December 12, 1927, as alleged by plaintiffs, but denies that the list of plaintiffs as set out in said paragraph of said petition is the same as the list of plaintiffs to which the said Commission awarded reparation in its said order of December 12, 1927.

108 3. Answering the allegations of paragraph 3, 4 and 5 of said petition, this defendant admits that it is a cor-

poration organized and existing under the laws of the State of Illinios, with its principal office and place of business at Chicago, in said State, but denies that it is now or was at any time mentioned in said petition a common carrier for hire engaged in the transportation of interstate or interstate commerce and as such subject to the Act to Regulate Commerce and Acts supplemental thereto or amendatory thereof. Further answering, this defendant says, that at no time was it taken under Federal Control by the United States Railroad Administration and was at no time operated by any Director General of Railroads under the Federal Control Act or the Transportation Act, 1920.

4. Answering the allegations of Paragraph 7 of said petition, this defendant says that it does not have sufficient information with respect to or knowledge of the shipments referred to in said paragraph to form a belief with respect thereto, and therefore denies said allegations and requires strict proof thereof. The defendant denies, however, that any shipments in Interstate Commerce were made over its line from and to the Union Stock Yards at Chicago, Illinois, and says that it does not now, and did not, at any time mentioned in said petition, own or operate a railroad of any kind whatsoever, and that it could not, therefore, engage in the transportation of any shipments as alleged by planitiffs. Further answering the allegations of said paragraph, this defendant specifically denies that at any time it unlawfully and unreasonably collected and received unlawful and unreasonable charges for the loading and unloading of live stock, at the Union Stock Yards in Chicago, Illinois, in violation of the Act to Regulate Commerce, as amended, or
109 any other law. Further answering the allegations of said paragraph, this defendant says that for its service in loading and unloading shipments of live stock at said yards at all times mentioned in the petition herein, and for the use of its facilities used in such service, it collected from the railroads hauling said shipments into or out of Chicago, charges contained in its tariffs then published and filed with the Interstate Commerce Commission; that said charges had been approved by said Commission as being proper charges to be collected by this defendant from said railroads, for such service and the use of such facilities; that in every instance, said service was performed by this defendant for and on behalf of the railroad from which the said charge was collected, and that in no instance was said charge collected by

this defendant from the shipper or consignee of any shipments. This defendant further says that in performing the service of loading and unloading live stock at the Union Stock Yards at Chicago, during all times mentioned in the petition filed herein, it was acting as the agent of the railroad or line haul carrier hauling said shipments into or out of said yards, and did not perform a common carrier service on its own behalf with respect to any of said shipments. The defendant therefore denies that it received from Plaintiffs the sum of one hundred forty thousand and one dollars and twenty-five cents ($140,001.25), or any other sum, as compensation for loading or unloading live stock at the Union Stock Yards in Chicago, or as compensation for any other common carrier service performed by this defendant.

5. Answering the allegations of paragraph 8 of said petition, this defendant admits that prior to May 21, 1917, it had in effect its tariff published and filed with the Interstate Commerce Commission, making a charge of 25c for unloading each car of live stock and 50c for loading each car of live stock at the Union Stock Yards at Chicago; and says
110 that the service was performed by it for and on behalf of, and said charges were paid to it by the railroads hauling such shipments of live stock into and out of said Stock Yards. This defendant further admits that on May 21, 1917, by tariff duly published and filed with the Interstate Commerce Commission, it increased said charges to 50c for unloading each car of live stock and to 75c for loading each car of live stock at said Stock Yards, but denies that under and by virtue of said tariff the plaintiffs herein or any receiver or shipper was compelled to and did pay to this defendant for any service performed by it, any amount whatsoever for the loading or unloading of any shipments of live stock to or from said Stock Yards, and says that in the case of every shipment of live stock which was loaded or unloaded at said Stock Yards, subsequent to the publication and filing of said tariff, the service of loading or unloading was performed by this defendant for and on behalf of, and said charge was collected from, the railroad handling said car into or out of said Stock Yards, in accordance with the provisions of said tariff. Further answering, this defendant says that if plaintiffs paid any charges for the loading or unloading of live stock at said Stock Yards, said charges were not paid to this defendant for any service performed by it, nor by reason of any tariff published and filed by this defend-

ant, but were paid to the railroads hauling said shipments into and out of said Yards and that this defendant had no connection therewith or interest therein.

6. This defendant admits the allegations of paragraphs 9 and 10 of said petition.

7. Answering the allegations of paragraph 11 of said petition, this defendant denies that there was any duty or obligation whatsoever on its part to the plaintiffs herein, to either load or unload any shipments of live stock made to
111 or from the Union Stock Yards at Chicago by the plaintiffs herein, and denies that it performed any transportation service in its own behalf by loading and unloading shipments at said yards for and on behalf of the railroads hauling such shipments to and from said Yards, and denies that it collected on its own behalf any charges of any character for said service of loading or unloading from said plaintiffs. Further answering, this defendant says that the only charges collected by it for the service of loading or unloading any shipments of live stock at said Yards were collected by it from the railroads which handled said shipments into or out of the yards and were assessed and collected in accordance with this defendant's tariff duly published and filed by it with the Interstate Commerce Commission. Further answering, this defendant says that in loading or unloading any shipment of live stock at said Yards, it was performing a service for and on behalf of the railroads hauling such live stock into or out of said Yards, and as their agent, and denies that any charges assessed and collected by it from said railroads with respect to any of said shipments were unjust or unreasonable or in any way in violation of the Act to Regulate Commerce or any other law.

8. Answering the allegations of paragraph 12 and 13 of said petition, this defendant admits that upon the filing of its tariff, effective September 1, 1917, formal protests were filed with the Interstate Commerce Commission, and that said tariff was suspended from time to time by said Commission and the mater set down for hearing under its Investigation and Suspense Docket No. 1118. Further answering, this defendant admits that on or about October 2, 1917, the Chicago Live Stock Exchange filed a complaint with the Interstate Commerce Commission under its Docket No. 9977, but denies that in said complaint the loading and unload-
112 ing charges contained in ths defendant's tarff then on file with the Interstate Commerce Commission were assailed

as unlawful, unjust and unreasonable under the Act to Regulate Commerce. This defendant admits that thereafter said Dockets 1118 and 9977 were consolidated for hearing and that a report and decision thereon was made by the Interstate Commerce Commission, said report and decision being reported at 52 I. C. C. 209.

9. Answering the allegations of paragraph 14 of said petition, this defendant admits that the order set out therein was issued by the Interstate Commerce Commission on or about April 14, 1919, and admits that upon a further hearing of said causes, the Interstate Commerce Commission issued its further report therein, reported at 58 I. C. C. 164. Further answering this defendant denies that in said decision and report said Commission found the charges for loading and unloading live stock at the Union Stock Yards at Chicago were unlawful or in violation of the Interstate Commerce Act or any other law, and says that in said decision said Commission approved the loading and unloading charges of this defendant then published and filed with it. Further answering this defendant denies that the Interstate Commerce Commission acquired or had any jurisdiction to make any finding in said proceeding that plaintiffs were entitled to receive any reparation from it because of any shipment made by said plaintiffs, and denies that said Commission acquired or had any jurisdiction to make an order requiring this defendant to make any payment of money.

10. Answering the allegations of paragraph 15 of said petition this defendant denies that plaintiffs filed with the Interstate Commerce Commission, within two years after December 28, 1917, their complaint for the recovery of damages in compliance with the law. This defendant admits
that counsel for complainant in Docket 9977, filed with
113 said Commission an alleged list of shippers but denies
that said list was filed with the permission of said Commission or that it was registered and accepted by said Commission, and denies that any prayer for reparation in behalf of said alleged shippers or any of them, was filed in said proceeding and denies that said list contained the names of the plaintiffs herein, and says that said list was filed after the taking of testimony in said proceedings had been completed and the hearings concluded, without notice to this defendant and without service upon it. Further answering, this defendant says that the filing of said list did not operate to make the parties named therein parties to said proceeding,

through intervention or otherwise, and did not constitute a complaint, intervention or claim for reparation against this defendant on behalf of any party named therein, and that it did not give to the Interstate Commerce Commission jurisdiction to consider any claim against the defendant on behalf of any person or corporation named in said list nor jurisdiction or authority to make any finding or order against this defendant on account of any of said persons or corporations or on account of any claim in behalf of them. This defendant further denies that said Commission ever found that the parties whose names were included in said list had been damaged by the assessment of the loading and unloading charges hereinbefore referred to, or that said Commission found that any of said parties had paid such charges or that any of them was entitled to reecive reparation from this defendant because of any such payment. Further answering, this defendant says that there is no testimony or evidence in any proceeding before the Interstate Commerce Commission, with respect to any shipment made by any person or corporation named on said list, or by plaintiffs which would justify any finding or order against this defendant on any such shipment, and that any finding or order
114 against this defendant in favor of any such person or corporation or in favor of plaintiffs would be, if made by said Commission, without any evidence in the record in support thereof and wholly without jurisdiction.

11. Answering the allegations of paragraphs 16 and 17 of said petition, this defendant admits that a petition was filed by the Chicago Live Stock Exchange with the Interstate Commerce Commission under its Docket 12614, on or about February 25, 1921, but denies that said petition assailed the loading and unloading charges collected by this defendant as unlawful or in violation of the Interstate Commerce Act or any other law, and denies that plaintiffs were then members of the Chicago Live Stock Exchange, or that they were named as complainants in said petition. Further answering, this defendant admits that the Commission made a consolidated decision and report in said case and Docket 9977, after further hearing, said decision and report being reported at 100 I. C. C. 266, but denies that in said decision it was found that the loading and unloading charges of this defendant were unjust and unreasonable, and denies that said Commission found that plaintiffs were entitled to reparation from this defendant, because of any such charges paid by them to this

defendant. Further answering this defendant says that plaintiffs were not parties to said proceeding and made no claim therein against this defendant; that no hearing was had in said proceeding on any claim for reparation by plaintiffs against this defendant, and that therefore any order of the Interstate Commerce Commission requiring this defendant to make any payment of money to plaintiffs would be invalid as being without any evidence to support it and act within the jurisdiction of said Commission. Further answering, this defendant says that paragraph 3 of Section 16
of the Interstate Commerce Act, provides that all claims
115 for the recovery of damages shall be filed with the Interstate Commerce Commission within two years from the time the cause of action accrues and not after; that no claim for the amount herein sued for was filed with said Commission within the time allowed by the Interstate Commerce Act and that therefore, the said Commission was without jurisdiction to consider such claims or to make any findings or orders with respect thereto. This defendant further says that said Commission did not proceed in accordance with law in said proceeding, and that in so far as it attempted to deal with any claim of plaintiffs against this defendant, it acted unlawfully and without jurisdiction and its findings and orders are void and without effect.

12. Answering the allegations of paragraph 18, 19, 20 and 21 of said petition, this defendant admits that on December 12, 1927, May 14, 1928 and November 27, 1928, the Interstate Commerce Commission made its further orders in said cause, but denies that in any of said orders or in any of the orders theretofore entered by the Commission in said cause, the Interstate Commerce Commission found any charges of this defendant to be unjust and unreasonable or in any other way in violation of the law. Further answering, the allegations of said paragraphs, this defendant says that it has no knowledge as to whether or not any statements were filed with the Interstate Commerce Commission by plaintiffs, as alleged by them, and that therefore it denies said allegation and requires strict proof thereof. Further answering this defendant says that plaintiffs were not parties to the proceeding in which any of said orders were entered through intervention or otherwise; that no claim was made in said proceedings against this defendant for reparation; that no issue involving any such claim was presented and that there was

no testimony thereon; that any claim of plaintiffs against
116 this defendant was then barred by the limitation contained in paragraph 3 of Section 16 of the Interstate Commerce Act; that therefore said Commission had no authirty or jurisdiction to enter said orders and that said orders are wholly void and without force or effect in so far as they undertake to establish a liability of this defendant to plaintiffs.

13. This defendant admits the allegations of paragraph 22 of said petition, except that it denies that by virtue of anything therein alleged, plaintiffs have been damaged in any amount or amounts whatsoever or are entitled to recover any amount whatsoever from this defendant.

14. Further answering said petition, this defendant says that all of the findings and orders of the Interstate Commerce Commission relied on in said petition were and are without support in any evidence or testimony offered on any hearing before said Commission, and are contrary to law; that on the dates of the awards sued on herein, any claim of the plaintiffs against this defendant, accruing prior to February 28, 1920, was barred by the limitation contained in Paragraph 3 of Section 16 of the Interstate Commerce Act; that therefore, said Commission was at all times without jurisdiction or authority to make any award in favor of plaintiffs and against this defendant, and that the awards and findings sued on in this case are entirely void and without legal effect.

15. Further answering said petition, this defendant says, that at all the times and during all the periods mentioned in said petition, the duty of loading and unloading live stock at the Union Stock Yards, in Chicago, was a duty of the shippers or receivers of the stock or of the railroads handling such stock into and out of said Yards; that at no time was any duty with respect to the loading and unloading of such stock cast upon this defendant through operation of law or otherwise. This defendant further says that the duty and obli-
117 gation to load and unload such stock had been assumed by the railroads hauling such stock into and out of said Yards; that in loading and unloading live stock at said Yards, it therefore acted only as the agent of such railroads and that the charge collected by it was collected from such railroads as compensation for the service performed by this defendant for and on behalf of such railroads and as compensation for the use by such railroads of the loading and unloading facilities belonging to this defendant. Further answering this defend-

ant says that in loading and unloading live stock at said Yards, it was never acting on its own behalf and that in performing said service and furnishing facilities therefor, it never performed any common carrier service for its own account; that it was never under any circumstances, a party to the transportation of said live stock through contract or otherwise, and that it was never a party to any tariffs of any railroad, which contained rates and charges for the transportation of live stock, and did not, under any circumstances participate in such rates or charges or receive any part thereof; that it never performed any service on its own behalf over which the Interstate Commerce Commission had jurisdiction; that therefore the Interstate Commerce Commission in the proceedings referred to in the petition filed herein, had no jurisdiction over this defendant, and that said Commission erred in finding in its reports and decisions entered in said proceedings that this defendant was a common carrier and that when it loaded and unloaded live stock at said Yards, it was rendering a common carrier service in the transportation of said stock.

16. This defendant further says that in its report and decision, reported at 58 I. C. C. 164, the Interstate Commerce Commission found and held that the duty of loading and unloading live stock at the Union Stock Yards at Chicago, 118 Illinois, rested upon the railroads hauling such stock into and out of said Yards, and not upon this defendant; that said service, when performed by this defendant, was a service of the railroads to the shipper or receiver, which said railroads were obligated by law to perform, either themselves or through this defendant as their agent. Defendant says, therefore, that said Commission had no authority or jurisdiction to make any order requiring this defendant to make any payment to plaintiffs by way of reparation or otherwise and that any such order or orders are null and void and of no legal effect whatsoever.

Wherefore, this defendant prays that said petition may be dismissed as to it and for costs.

THE UNION STOCK YARDS AND TRANSIT COMPANY OF CHICAGO
By WINSTON, STRAWN & SHAW
Its Attorneys.

RALPH M. SHAW
FRANK H. TOWNER
Of Counsel.

r. 8, 119 And on, to wit, the 8th day of April 1929 came the Andrew M. Mellon as Agent etc. by his attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

120 * * (Caption) * *

ANSWER OF ANDREW W. MELLON, DIRECTOR GENERAL OF RAILROADS, AS AGENT.

To the Honorable Judge of Said Court:

Andrew W. Mellon, Director General of Railroads, as agent, one of the defendants in the above entitled suit, for answer to the petition of the plaintiffs filed therein states:

1. This defendant admits that some of the persons mentioned in paragraph 2 of said petition and described as plaintiffs were named in a certain pretended order of the Interstated Commerce Commission, purporting to be entered December 12, 1927, but states that many of the persons named in said paragraph 2 are not named in said pretended order, and further states that the Interstate Commerce Commission was without jurisdiction to enter the said pretended order so entered on December 12, 1927, and was without authority or jurisdiction in entering said pretended order to require this defendant to pay the said persons, firms or corporations named in said paragraph 2 of said petition or any of them any amount as reparation or damages, and the said pretended order furnishes no basis for the allowance of damages against this defendant in favor of said persons, firms
121 or corporations, or any of them.

2. This defendant admits that the defendant, Union Stock Yards & Transit Company, is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at Chicago in said State of Illinois. This defendant further admits that he occupies the position of Director General of Railroads as agent designated by the President of the United States, pursuant to the provisions of Section 206-A of the Transportation Act 1920, and as such agent is the officer against whom actions at law may be brought based on causes of action arising out of the possession, use or operation by the President of railroads and systems of transportation during the period of Federal Con-

trol of railroads, of such character as prior to Federal Control could have been brought against the carrier owning any such system of transportation.

Defendant admits that the railroads named in said paragraph 3 were in the possession, use and operation of the President during the period of Federal Control, but denies that the persons named as receivers of the Chicago & Alton Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company were receivers of such companies or either of them prior to or during the period of Federal Control of Railroads, but states that such persons were appointed receivers for such companies respectively subsequent to the termination of Federal Control of railroads.

This defendant denies each and every allegation in said paragraph 3 of said petition, not herein expressly admitted.

3. This defendant admits the allegations contained in paragraph 4 of said petition.

122 4. For answer to paragraph 5 of said petition, this defendant admits that the said railroads so in the possession, use and operation of the President, were at all times during the period of Federal Control of Railroads operated as common carriers for hire, engaged in transportation in both intrastate and interstate commerce, under and in accordance with the provisions of the Federal Control Act, approved March 21, 1918, but denies that said systems of transportation were operated subject to the provisions of the Act of Congress entitled an "Act to Regulate Commerce," approved February 4, 1887, or subject to the acts supplemental thereto or amendatory thereof, except in so far as expressly provided in said Federal Control Act.

5. For answer to paragraph 6 of said petition, this defendant admits that this is a civil suit for damages for alleged violation of the act of Congress known as an "Act to Regulate Commerce," and admits that the petition prays for damages in the sum of One Hundred Forty Thousand One and 25/100 ($140,001.25) Dollars, and attorneys' fees, but expressly denies that this court has jurisdiction of the parties or of the subject matter by virtue of the provisions of the Act to Regulate Commerce as amended, and Transportation Act 1920 as amended, and alleges that the provisions of the Transportation Act 1920 with reference to complaints praying for reparation on account of damage claimed to have been caused by reason of the collection, or enforcement by or through the President during the period of Federal Control,

of rates, fares, charges, classifications, regulations or practices which are unjust, unreasonable, unjustly discriminatory or unduly or unreasonably prejudicial or otherwise in violation of the Interstate Commerce Act, were not complied
123 with by the persons, firms and corporations described and designated as plaintiffs herein or any of them in reference to the matters complained of and the Interstate Commerce Commission acquired and had no jurisdiction to enter or make any order against this defendant or in favor of any of the said alleged plaintiffs.

6. Fo answer to paragraph 7 of said petition, this defendant expressly denies that the persons, firms or corporations described and designated as plaintiffs in this suit or any of them shipped or paid charges on any shipments of livestock over the line of railroad and systems of transportation described in paragraph 3 of said petition during the period of Federal Control of Railroads, and expressly denies that the said alleged plaintiffs or any of them paid any amount to the Director General of Railroads or his representatives during the period of Federal Control of railroads or thereafter on account of loading or unloading carloads of livestock at Union Stock Yards, Chicago, Illinois.

Further answering said paragraph 7 and in response to profert made therein, this defendant requests and demands that the statements setting forth date of delivery, car number, waybill number, originating station, consignee and amount of reparation claimed, alleged to have been filed with and to be now in the possession of the Interstate Commerce Commission be furnished this defendant for examination and for use in preparing his defense, and that same be furnished this defendant within a reasonable time after the filing of this answer.

7. For answer to paragraph 8 of said petition, this defendant admits that prior to May 21, 1917, there was in effect a tariff published and filed with the Interstate Commerce Commission by Union Stock Yard & Transit Company, provid-
ing for charges of twenty-five cents for unloading each
124 car of livestock and fifty cents for loading each car of livestock at Union Stock Yards, Chicago, and that such charges were assessed by the Union Stock Yard & Transit Company on all cars of livestock loaded or unloaded by it at said place. That there was in effect a tariff published and filed with the Interstate Commerce Commission, to which the railroad companies named in paragraph 3 of said petition

were parties, which provided that the sum of twenty-five cents for unloading and fifty cents for loading each car of livestock at Union Stock Yards, Chicago, would be absorbed and paid by said railroad companies to Union Stock Yard & Transit Company on all cars of live stock transported over their respective lines and loaded or unloaded by the said Union Stock Yard & Transit Company at said place, said tariff being Agent L. A. Lowry's tariff 20-J, I. C. C. No. 37. This defendant further admits that effective May 21, 1917, the Union Stock Yard & Transit Company filed with the Interstate Commerce Commission its tariff I. C. C. No. 2, increasing charges for loading and unloading livestock at Union Stock Yards, Chicago, making the charge for unloading fifty cents and the charge for loading seventy-five cents per car, and that no tariff was filed by said railroad companies or by the Director General of Railroads providing for the absorption of said increased charges. This defendant admits that shippers of livestock were required to pay the Union Stock Yard & Transit Company said additional charges, but denies that any or either of the persons, firms or corporations named and designated as plaintiffs herein, or any other shipper or any receiver of livestock paid such increased charges to the said railroad companies or either of them and denies that any or either of said parties named and designated as plaintiffs herein or any shipper or receiver of livestock paid such increased charges for loading or unloading or any charge whatever therefor to the Director General of Railroads or to this defendant or any of his predecessors.

Defendant expressly denies that any of the persons, firms or corporations named and designated as plaintiffs herein paid to him or any predecessor in office or to the Director General of Railroads any amount as a loading or unloading charge for loading or unloading at Union Stock Yards, Chicago, any shipment of livestock whatever.

Further answering said paragraph 8, this defendant admits that pursuant to tariffs in effect, unloading charges in the sum of twenty-five cents and loading charges in the sum of fifty cents were absorbed by carriers under Federal Control in reference to all carloads of livestock transported to or from said Union Stock Yards by carriers under Federal Control during the Federal Control period.

8. For answer to paragraph 9 of said petition, this defendant admits the allegations therein are true.

9. For answer to paragraph 10 of said petition, this de-

fendant denies that during the said period of Federal Control from December 28, 1917, to March 1, 1920, the Stock Yards of the Union Stock Yard & Transit Company were the terminals of the predecessors in office of this defendant or of the Director General of Railroads with respect to any shipment of livestock moving over the lines of carriers and systems of transportation under Federal Control.

10. For answer to paragraph 11 of said petition, this defendant expressly denies that it was the duty of the predecessors in office of this defendant or of the Director General of Railroads to load or unload livestock transported to or from Union Stock Yards, Chicago, upon lines of railroad under Federal Control. This defendant admits that the loading
126 and unloading of livestock at said place was a part of the transportation of such livestock, but denies that such loading and unloading was a part of the transportation thereof furnished by carriers under Federal Control. This defendant expressly alleges that the loading and unloading of of livestock at said place was a transportation service undertaken and performed by Union Stock Yards & Transit Company, a connecting carrier, pursuant to its tariffs duly filed with the Interstate Commerce Commission, and that all charges made for such services in reference to livestock transported to or from said Stock Yards by carriers under Federal Control were made by and paid to the said Union Stock Yard & Transit Company.

Defendant expressly denies the collection of separate charges for loading and unloading such livestock was unlawful or unreasonable and in violation of the Interstate Commerce Act, and expressly denies that the parties named as plaintiffs herein or any of them have been damaged on account of the collection of such charges on livestock transported to or from Union Stock Yards, Chicago, during the period of Federal Control of Railroads over lines of railroad under Federal Control of Railroads.

11. For answer to paragraph 12 of said petition, this defendant admits protests were filed with the Interstate Commerce Commission as therein alleged, and that the tariff referred to was suspended from time to time by the Interstate Commerce Commission, and that said matter was set down for hearing under investigation and suspension docket No. 1118.

12. For answer to paragraph 13 of said petition, this defendant admits that on or about October 2, 1917, the Chicago

Live Stock Exchange filed a complaint with the Interstate Commerce Commission, as in said paragraph alleged, and
127 that same was docketed under I. C. C. Docket No. 9977, and that various railroad companies were made defendants; that said Docket 9977 and I. & S. Docket 1118 were consolidated for hearing and on February 11, 1919, the Interstate Commerce Commission issued its report and decision in said cause, dismissing said complaint, said report and decision being reported in 52 I. C. C. 209.

13. For answer to paragraph 14 of said petition, this defendant admits that on or about April 14, 1919, upon petition of the Chicago Live Stock Exchange, a rehearing of said matters involved in I. C. C. Docket 9977 and I. & S. Docket 1118 was granted by supplemental order of the Commission, a copy of which is set out in said paragraph. This defendant alleges that the Director General of Railroads was not a party to the said proceeding prior to April 14, 1919, and that the said supplemental order did not purport to make the Director General of Railroads a defendant in said Docket 9977, but purported to make the Director General of Railroads a party respondent in I. & S. Docket No. 1118 only.

Further answering said paragraph, this defendant alleges that the Director General of Railroads was not served with said order or with any complaint in either of said proceedings, did not appear therein or participate in the rehearing of said matters, and no claim for reparation was filed or made in said proceedings either by the claimants therein or by any or either of the parties named or designated as plaintiffs in this suit by petition of intervention or otherwise, and this defendant expressly denies that the Director General of Railroads was represented in said proceedings by an attorney or otherwise, and denies that the Director General took any part in said proceedings.

128 Further answering said paragraph 14, this defendant admits that on or about July 15, 1920, the Interstate Commerce Commission issued its report on said further hearing, which is reported and published in 58 I. C. C. 164. This defendant expressly denies that the Interstate Commerce Commission acquired or had jurisdiction to make any finding in said proceeding that the parties named as plaintiffs in this suit or any or either of them was entitled to reparation from the Director General or from the agent appointed pursuant to Section 206-A, Transportation Act 1920, on account of any

shipments of livestock during the period of Federal Control of railroads, and expressly denies that the said Interstate Commerce Commission acquired or had jurisdiction in said proceedings to make any order requiring the Director General of Railroads or the said Agent to make reparation or to make any payment of money to the parties named as plaintiffs herein or any of them, and denies that the Interstate Commerce Commission acquired or had jurisdiction therein to make any order against the Director General of Railroads or against the said agent, and denies that the Interstate Commerce Commission made or attempted to make any order therein in favor of the parties named as plaintiffs in this suit, or any of them, and against either the Director General of Railroads or the agent appointed pursuant to Section 206-A, Transportation Act 1920.

14. For answer to paragraph 15 of said petition, this defendant expressly denies that within two years after December 28th, 1917, the persons, firms or corporations designated as plaintiffs herein or any of them filed with the Interstate Commerce Commission a complaint for the recovery of damages from the Director General of Railroads, and expressly denies that said alleged plaintiffs or any of them
129 filed such complaint on June 16, 1919, and expressly denies that said parties designated as plaintiffs filed such a complaint against the Director General of Railroads in compliance with the provisions of the Act to Regulate Commerce, as amended, and denies that said parties designated as plaintiffs or any of them filed a complaint of the character described and as alleged in said paragraph 15, as against the Director General of Railroads.

This defendant admits that on June 16, 1919, counsel for the Chicago Live Stock Exchange filed an alleged list of shippers with the Interstate Commerce Commission in the said proceedings aforesaid, but this defendant denies that same was filed with permission of the Interstate Commerce Commission and denies that any prayer for reparation in behalf of said alleged shippers or either of them was filed in said proceeding, and denies that said list was duly registered and accepted by the Commission.

This defendant further alleges that said list was filed after the taking of the testimony in said proceedings had been completed and the hearings therein concluded and without notice to the Director General of Railroads, and without service upon the Director General of Railroads, and, as this

defendant is informed and believes and therefore alleges, without service upon and without notice to any of the parties to said proceedings. That the said parties designated as plaintiffs in this suit were not named in said list, nor were any of said parties named therein.

Further answering said paragraph, this defendant alleges that the filing of said list did not make the parties named therein parties to said proceeding, nor did the filing of said list constitute an intervention or a complaint or claim
130 for reparation against the Director General of Railroads, in behalf of the said alleged shippers named in said list or any or either of them, nor did the filing of said list give the Interstate Commerce Commission jurisdiction to consider any claim on behalf of any person, firm or corporation named in said list as against the Director General of Railroads, nor did same give the Interstate Commerce Commission jurisdiction or authority to make any finding or order against the Director General of Railroads on account of any of said persons, firms or corporations named in said list on account of any claim in behalf of said parties or any or either of them. This defendant further alleges that the Interstate Commerce Commission did not in its decision in said matter find that the said parties named in said list or either of them had been damaged by the assessment of loading and unloading charges on carloads of livestock at Union Stockyards, Chicago, during the period of Federal Control of Railroads, nor did the Commission find that the said parties named in said list or any of them paid any such loading or unloading charges or that such parties or any or either of them was entitled to reparation on account of paying such charges as against the Director General of Railroads or as against the agent appointed by the President, pursuant to Section 206-A, Transportation Act, 1920.

This defendant, for further answer to said paragraph, further alleges that no testimony was taken after the filing of said list, and that no testimony was taken in said proceedings in reference to any shipment made by persons, firms or corporations named in said list, and any finding or order in respect to a claim of any or either of said persons, firms or corporations named in said list as against the Director General of Railroads or as against the said agent if made by the
131 Interstate Commerce Commission would be without any evidence in the record in support thereof, and wholly without jurisdiction and void.

15. For answer to paragraph 16 of said petition, this defendant admits that on or about February 25, 1921, the Chicago Livestock Exchange filed a complaint with the Interstate Commerce Commission against the Union Stock Yard & Transit Company, certain corporate carriers and against the then agent appointed pursuant to Section 206-A, Transportation Act 1920, assailing the loading and unloading charges made by the Union Stock Yard & Transit Company of Chicago for loading and unloading livestock at its said yards, as unlawful, unjust and unreasonable, and in violation of the Interstate Commerce Act, and admits that same was docketed as I. C. C. Docket No. 12614, and that defendants filed answers thereto.

Defendant admits that attached to said complaint was a list of persons, firms and corporations alleged to be shippers, said list being designated Appendix "A," but defendant denies that the persons, firms and corporations named as plaintiffs herein or any or either of them were included in said list, and denies that the parties named in said list thereby became parties complainant in said matter, and denies that the said complaint constituted any claim for reparation against the Director General of Railroads or against the agent appointed under Section 206-A, Transportation Act, 1920, in behalf of any of the parties named in said complaint, or in said Appendix A, on account of any shipments of livestock loaded or unloaded at Union Stock Yards, Chicago, during the period of Federal Control of Railroads.

16. For answer to paragraph 17 of said petition, this defendant admits that some but not all of the parties named as plaintiffs in this suit were named in the complaint in said docket 12614, and described as members of the Chicago Live Stock Exchange, but denies that the said parties named as plaintiffs herein or any or either of them were named in the said Appendix A attached to said complaint, and denies that the parties named as plaintiffs herein or any or either of them were parties to said complaint or presented any claim therein as against the Director General of Railroads or the agent appointed pursuant to Section 206-A, Transportation Act 1920.

This defendant admits that a public hearing was had on said complaint at which evidence was taken and heard and further hearing in said docket 9977, and after said hearing the Interstate Commerce Commission issued its consolidated decision and report in said causes, which report is published

and reported in 100 I. C. C. 266, and referred to in said paragraph, but no copy thereof is attached thereto.

Further answering said paragraph 17, this defendant alleges that Paragraph C of Section 206, Transportation Act 1920, required at and prior to the time of the proceedings aforesaid that all claims for reparation on account of any violation of the Interstate Commerce Act in the operation of railroads under Federal Control must be filed with the Interstate Commerce within one year after the termination of Federal Control of Railroads and against the agent designated by the President under said Section 206, designating therein the railroad or system of transportation against which such claim would have been made if such railroad or system had not been under Federal Control at the time the matter complained of took place. And defendant alleges that

133 neither of the parties named as plaintiffs herein filed in said proceeding any claim for reparation with the Interstate Commerce Commission against the said agent on account of assessment and payment of charges for loading or unloading livestock at Union Stock Yards, Chicago, naming and designating the railroad or system of transportation against which complaint would have been brought if such railroad or system of transportation had not been under Federal Control at the time the matter complained of took place, nor did the parties named as plaintiffs herein, or any or either of them, in any manner file or make complaint in said proceeding against the Director General of Railroads or the said agent within one year after the termination of Federal Control of Railroads on account of such matters, in manner and form as required by said Paragraph C, Section 206, Transportation Act 1920, and at the time of the making of said report and for a long time prior thereto, claims of the character involved in said proceeding on behalf of said parties so named as plaintiffs, if any they had, were barred by Section 206, Transportation Act 1920, and the consent of the Government to the filing of such claims with the Interstate Commerce Commission had long prior thereto expired and the Interstate Commerce Commission was by reason thereof without any jurisdiction to consider such claims or to make any findings or orders in respect thereto.

For further answer to said paragraph 17, this defendant states that neither of the parties named as plaintiffs herein presented any claim in said proceedings as against the Director General of Railroads or as against the said agent ap-

pointed by the President, pursuant to Section 206-A, Transportation Act, 1920, designating any specific shipments or any specific railroad or system of transportation prior to the time of the taking of testimony in said matter, nor until more than one year after the termination of Federal Control of Railroads. That during the taking of testimony in said
134 proceeding, and after March 1, 1921, some of the parties named as plaintiffs herein presented testimony in support of alleged claims for reparation on account of the assessment and payment of loading and unloading charges for carload shipments of livestock loaded and unloaded at Union Stock Yards, Chicago, during the period of Federal Control of Railroads, which charges were in such testimony alleged to have been paid by said parties as commissionmen or brokers, charging the amount to and collecting same from shippers, and in which testimony the said parties did designate the railroads or systems of transportation over which the shipments of livestock involved were transported either to or from Union Stock Yards, Chicago, but this defendant alleges that prior to such time the consent of the government to the filing of such claims with the Interstate Commerce Commission had long since expired and at such time the Interstate Commerce Commission was without jurisdiction or authority to consider such claims or to make any order thereon requiring or authorizing the payment of any sum as reparation or damages by the said agent appointed pursuant to said Section 206-A, Transportation Act, 1920, to the said parties so offering such testimony or any or either of them.

This defendant expressly denies that the Interstate Commerce Commission proceeded legally in said hearing or in its report and decision thereon, and alleges that in so far as the said Interstate Commerce Commission attempted to deal with any claim of any or either of the parties named as plaintiffs herein as against the said agent, it acted unlawfully and without jurisdiction and its pretended findings and orders therein are absolutely void.

17. For answer to paragraph 18 of said petition, this defendant denies that plaintiffs submitted to the Inter-
135 state Commerce Commission statements of shipments made by them and upon which any loading or unloading charges were collected by the Director General of Railroads or by this defendant or any predecessor of this defendant as agent appointed pursuant to Section 206, Transportation Act

1920, and this defendant further expressly denies each and every allegation in said paragraph 18 contained.

18. For answer to paragraph 19 of said petition, this defendant admits that on or about the 12th day of December, 1927, the Interstate Commerce Commission entered a pretended order in the proceedings aforesaid, but defendant denies that a copy of said pretended order, marked Exhibit "A", is made a part of said petition or is attached thereto. This defendant further alleges that the Interstate Commerce Commission had theretofore made no findings that the alleged shipments involved in said pretended order had been made by plaintiffs or any or either of them, or that plaintiffs or any or either of them had paid loading or unloading charges on such shipments, nor that plaintiffs or any or either of them had been damaged on account of any charges paid on such shipments.

19. For answer to paragraph 20 of said petition, this defendant admits that on or about May 14, 1928, the Interstate Commerce Commission issued a pretended supplemental report and order in said matter, but denies that said pretended supplemental report and order are attached to plaintiff's petition, marked Exhibit "E" or otherwise, and denies that same is made a part thereof.

20. For answer to paragraph 21 of said petition, this defendant admits that on or about November 27, 1928, the Interstate Commerce Commission issued a further pre-
136 tended order in said matter, but denies that same is attached to said petition, marked Exhibit "F" or otherwise, and denies that same is made a part thereof.

21. For answer to paragraph 22 of said petition, this defendant admits that the said pretended reports and said pretended orders were served on this defendant, and this defendant has refused and still refuses to pay any sum or amount to plaintiffs or any or either of them, but this defendant expressly denies that any amount is owing to plaintiffs or any or either of them from this defendant on account of said matters and alleges that said pretended reports and orders were entered by the said Interstate Commerce Commission without jurisdiction, and same and each of them are wholly without legal force or effect and void.

22. Further answering said petition, this defendant alleges that all of the alleged and pretended findings, reports and orders set forth and relied on by plaintiffs in said petition

are and were without support in the evidence offered and submitted in the said several hearings and are contrary to law, and the said Interstate Commerce Commission was at all times without jurisdiction, power or authority to make any award in favor of plaintiffs or any or either of them and against the Director General of Railroads or against the agent appointed by the President, pursuant to Section 206, Transportation Act, 1920, on account of the assessment and payment of loading and unloading charges on carload shipments of livestock delivered to or received at Union Stock Yards, Chicago, during the period of Federal Control by carriers under Federal Control, and the said pretended awards sued on in this cause and the pretended findings
137 relied on in support thereof are void and wholly without legal effect.

23. Further answering said petition, this defendant alleges that no complaint or claim for reparation on account of the payments of charges for loading and unloading livestock at Union Stock Yards, Chicago, during the period of Federal Control was filed by plaintiffs or any or either of them with the Interstate Commerce Commission and against the Director General of Railroads, prior to the termination of Federal Control of Railroads.

24. Further answering said petition, this defendant alleges that Section 206, Transportation Act 1920, in paragraph C thereof, provides:

"Complaints praying for reparation on account of damage claimed to have been caused by reason of the collection or enforcement by or through the President during the period of Federal Control of rates, fares, charges, classifications, regulations, or practices (including those applicable to interstate, foreign, or intrastate traffic) which were unjust, unreasonable, unjustly discriminatory, or unduly or unreasonably prejudicial, or otherwise in violation of the Interstate Commerce Act, may be filed with the Commission, within one year after the termination of Federal control, against the agent designated by the President under subdivision (a), naming in the petition the railroad or system of transportation against which such complaint would have been brought if such railroad or system had not been under Federal control at the time the matter complained of took place."

By virtue of the foregoing, the Interstate Commerce Commission was given jurisdiction to hear and determine such

complaints when so filed and not otherwise. That no complaint praying for reparation on account of the payment of charges for loading and unloading livestock at Union Stock Yards, Chicago, or for any violation of the Interstate Commerce Act in connection with the transportation of live-
138 stock to or from the Union Stock Yards, Chicago, during the period of Federal Control of Railroads was filed by plaintiffs or any or either of them with the Interstate Commerce Commission within or one year after the termination of Federal Control of railroads and against the agent designated by the President, as provided in the said act, and naming the railroads or systems of transportation against which complaint on account thereof would have been brought if such railroads or systems of transportation had not been under Federal Control. Nor did plaintiffs or any or either of them file a complaint in reference to such matters as required by said Act at any time and all claims of plaintiffs and each and every of them, if any they had, on account of payment of such charges became barred at the expiration of one year from the termination of Federal Control, to-wit, at 12:01 a. m., March 1, 1921, and the consent of the United States to the bringing or prosecuting of complaints on account of such matters expired at said time, and the Interstate Commerce Commission had and could acquire no jurisdiction to entertain a complaint or a claim in reference to said matters, filed or presented thereafter, or to make any award thereon. And by reason thereof, and of the foregoing, the pretended findings and awards relied on by the plaintiffs and set forth and referred to in their petition were wholly void and without legal force or effect.

25. Further answering said petition, this defendant alleges that plaintiffs did not pay or bear the loading and unloading charges of which complaint is made herein, and plaintiffs did not suffer any damage by reason of the assessment and payment thereof. Said plaintiffs were related to the shipments involved merely as commissionmen or brokers
138 and such charges if any paid by plaintiffs were paid from monies of the various owners of the livestock involved and as agents of such owners and in accounting to such owners for the proceeds of the sales of the various shipments with reference to which such charges were paid, plaintiffs charged such amount to the said several owners who in fact

paid the same and were the persons who bore such charges and the persons damaged thereby, if damage to anyone resulted therefrom.

This defendant further alleges that the plaintiffs are not the real parties in interest in respect to the matters herein sued on and have no title to the claims for reparation, if any exist, on account of the payment of such charges, and are without such interest, right, capacity, or authority in the premises as will entitle them to maintain this suit.

26. Further answering said petition, this defendant alleges that the loading and unloading of livestock at Union Stock Yards, Chicago, transported thereto or therefrom by railroads under Federal Control, was during the entire period of Federal Control of railroads a duty of the shippers of such stock or of Union Stock Yards & Transit Company, or both, and expressly denies that the loading and unloading of livestock at said place transported thereto or therefrom by railroads under Federal Control was a duty of the Director General of Railroads, or of carriers under Federal Control.

This defendant further alleges that no charge for loading or unloading livestock at Union Stock Yards, Chicago, was made by any carrier under Federal Control in its tariffs or otherwise during said period, and the charges provided in the tariffs of such carriers for transportation of livestock to and from said Union Stock Yards, Chicago, did not include the loading or unloading of such livestock at such place, but provided only for the line haul of such livestock, but such
140 tariffs did provide for absorbing the sum of twenty-five cents for unloading and the sum of fifty cents for loading each car of livestock transported on the lines of carriers under Federal Control to or from such Union Stock Yards, and such amounts were paid to the Union Stock Yard & Transit Company by the Director General of Railroads, pursuant to such tariffs for all carloads of livestock so transported during the period of Federal Control of Railroads.

27. This defendant hereby refers to the reports and decisions of the Interstate Commerce Commission, referred to in the petition herein and published in 52 I. C. C. 209, 58 I. C. C. 164, and 100 I. C. C. 266, and makes same as published in said reports respectively a part hereof as fully and completely as if reiterated and set out herein verbatim and in full.

Wherefore, having fully answered this defendant prays

that the plaintiffs' petition be dismissed as to him, and for costs.

(Signed) EDGAR R. HART
Edgar R. Hart,
226 West Jackson Boulevard,
Chicago, Illinois
(Signed) SIDNEY F. ANDREWS
Sidney F. Andrews,
Hurley-Wright Building,
Washington, D. C.
(Signed) A. A. McLAUGHLIN,
A. A. McLaughlin,
1115 Bankers Trust Building,
Des Moines, Iowa.
Attorneys for Andrew W. Mellon, Director General of Railroads, as Agent under Section 206, *Transportation Act*, 1920,
Defendant.

141 And afterwards, to wit, on the 26th day of October 1929, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward District Judge, appears the following entry, to wit:

142 • • (Caption) • •

Saturday, October 26, 1929.

Present Honorable Charles E. Woodward Judge of said Court.

On agreement of the parties to this suit now here made in open Court It Is Ordered that this suit be and the same is hereby set for trial January 6, A. D. 1930.

143 And afterwards, to wit, on the 6th day of January 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward District Judge, appears the following entry, to wit:

144 • • (Caption) • •

Monday, January 6, 1930.

Present: Honorable Charles E. Woodward Judge of said Court.

On motion It Is Ordered by the Court that this cause be and the same is hereby continued for trial at the head of the trial call to January 7, 1930.

145 And afterwards, to wit, on the 7th day of January, 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

146 • • (Caption) • •

Tuesday, January 7, 1930.

Present: Honorable Charles E. Woodward, Judge of Said Court.

This cause being called for trial come the parties to this suit by their attorneys respectively and issues being joined herein It Is Ordered that a Jury come whereupon come the Jurors of a Jury of good and lawful men to wit:

Walter B. Hull	J. H. Bradford
Edward W. Blunke	W. E. Williams
Fred Kihm	Clarence W. Anderson
Richard Cooper	John D. Haines
Louis Solor	Roy Leonard
L. J. Maynard	Frank Meisinger

who are duly elected tried and sworn well and truly to try the issues joined herein and a true verdict render according to the law and the evidence and on motion of plaintiffs' attorneys It Is Ordered that this cause be and the same is hereby dismissed as to the defendants William W. Wheelock and William G. Bierd, Receivers of the Chicago and Alton Railroad Company, and the usual hour of adjournment having arrived It Is Ordered that said Jury be permitted to separate until 10 A. M. January 8 A. D. 1930.

147 And afterwards, to wit, on the 8th day of January 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit: Ente 19

148 * * (Caption) * *

Wednesday, January 8, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

This day again come the parties to this suit by their attorneys respectively and the Jury heretofore empaneled herein for the trial of said cause also come and thereupon at close of the plaintiffs' evidence plaintiffs rest with a reservation to take up the question of attorneys fees and the usual hour of adjournment having arrived It Is Ordered that said Jury be permitted to separate until 10:30 A. M. January 9 A. D. 1930.

149 And on, to wit, the 9th day of January, 1930 came the defendants by their attorneys and filed in the Clerk's office of said Court a certain Motion for a Directed Verdict in words and figures following, to wit: File 19

150 * * (Caption) * *

MOTION OF ANDREW W. MELLON, DIRECTOR GENERAL OF RAILROADS AS AGENT, FOR A DIRECTED VERDICT.

All parties having rested and the evidence being closed, defendant, Andrew W. Mellon, Director General of Railroads as Agent, etc., now moves the Court to direct the jury to return a verdict in his favor and against all of the plaintiffs, and urges as grounds therefor the following:

1. The evidence is insufficient to support or sustain the order of the Interstate Commerce Commission sued on in this case.

2. The evidence in this case shows that the consent of

Congress for the bringing and filing of complaints before the Interstate Commerce Commission and against the agent appointed by the President, pursuant to Section 206-A, Transportation Act 1920, was not complied with, and that the Interstate Commerce Commission acquired and had no jurisdiction to make the order and award sued on as against this defendant.

3. The evidence in this case shows that the Union Stockyards & Transit Company was, during all of the time complained of in this suit, a common carrier, and that it received the livestock, for the unloading of which the charges in controversy were assessed and collected, from the railroads being operated by the Director General of Railroads, under
151 Federal Control, as a connecting carrier; that it unloaded such livestock as such connecting carrier and delivered same after unloading to the consignees entitled to receive the same; that the charge collected for such unloading was provided for in its tariffs on file with the Interstate Commerce Commission and the said Union Stockyards & Transit Company collected said charges and received the benefits thereof.

4. The evidence before the Interstate Commerce Commission and in this case was and is insufficient to support the finding of the Commission that the collection of separate charges from the shippers for unloading and loading live stock in addition to the line haul rates on live stock, was an unlawful and unreasonable practice, but on the contrary such evidence shows the collection of such separate charges was both reasonable and lawful and the duty of the Union Stockyards & Transit Company.

5. The loading and unloading of live stock in carload lots was a part of the transportation of said live stock from point of origin to destination and was a service for which the shipper or consignee was obliged to compensate the carrier performing the same. Such service was performed by the Union Stockyards & Transit Company and the tariffs of the linehaul carriers delivering the said live stock to the Union Stockyards & Transit Company provided for absorbing or paying 25c for unloading and 50c for loading each carload of live stock at the Union Stockyards, Chicago. To the extent the charges of the said Union Stockyards & Transit Company for performing such service were not within the absorption provisions for the linehaul carriers, same were properly collectible from the shipper or consignee and being in a lawfully

published tariff the Union Stockyards & Transit Company was bound to make such collection.

152 6. The evidence in this case is insufficient to show that the Director General of Railroads collected or received any of the money paid to the Union Stockyards & Transit Company on account of the loading and unloading and unloading charge in dispute.

7. The evidence in this case is insufficient to show the amount, if anything, paid on account of the loading and unloading charges in controversy, received by the Director General.

8. The evidence in this case is insufficient to show the amount of liability if any existing in behalf of any plaintiff in this suit and against defendant, Andrew W. Mellon, Director General of Railroads as agent.

9. The evidence in this case shows that the evidence offered, introduced and received in the various hearings before the Interstate Commerce Commission in the proceedings in which the order sued on was made was insufficient to justify or support such order.

10. The evidence offered, introduced and received before the Interstate Commerce Commission, in the proceedings in which the order sued on was entered, was insufficient to support the Commission's finding and conclusion that the loading and unloading of livestock at the Union Stockyards, Chicago, was a duty that should be performed by the carriers without making a separate charge therefor.

11. The evidence in this case shows affirmatively and conclusively that plaintiffs received the livestock, on account of which the charges involved in this suit were assessed and collected, as commissionmen or agents of the various persons, firms and corporations who shipped the same, as consignees, for purposes of sale, in consideration of the payment of a commission and the said plaintiffs sold said livestock as such commissionmen and agents of the shippers and paid the charges in controversy, from the shippers' own funds, be-

153 fore remitting the net proceeds of the sale thereof and shows that the said plaintiffs do not have such interest or right as will entitle them or any of them to maintain suit to recover such charges in any event.

12. The evidence is insufficient to show such interest in plaintiffs or any of them as will permit of recovery herein on the part of any plaintiff as against this defendant.

13. Under all the evidence in this case, the fact of the

agent of the linehaul carriers inserting the unloading charge in the waybill stub, which constituted the bill presented by the Union Stockyards & Transit Company to the consignees, covering freight and terminal charges, will not justify a finding that the Director General participated in the collection of such charges or that he received the benefit of the collection thereof, nor will such fact justify a verdict against this defendant.

14. The charge complained of in this suit, while the tariff of the Union Stockyards & Transit Company providing therefor, was in effect and to the extent that the tariffs of the linehaul carriers made no provision for its absorption, was a charge the Union Stockyards & Transit Company was bound to collect from the consignor or consignee of the livestock involved and the fact that the agent of the linehaul carriers, in making up the bill to be presented by the Union Stockyards & Transit Company for freight and terminal charges, inserted or included such charge as a separate item therein will not justify or sustain a verdict against this defendant.

15. The evidence is insufficient to show a liability on the part of this defendant in favor of any plaintiff in this suit in any amount.

16. The evidence is insufficient to show that plaintiffs or any of them have been damaged in any amount by the collection of the charges in controversy.

17. The evidence affirmatively shows that plaintiffs and each of them are without any right or title to any claim that may have arisen on account of the collection of the
154 charges in controversy and are without any right or authority to maintain this suit and were without any right or authority to make complaint in their own names before the Interstate Commerce Commission on account of the collection of such charges, and the awarding of reparation to plaintiffs by the Interstate Commerce Commission was erroneous and contrary to law.

18. The evidence is insufficient to show or support the finding of the Interstate Commerce Commission that the docks and chutes of the Union Stockyards & Transit Company are or were the terminals of the railroad carriers but, on the contrary, affirmatively shows that such docks and chutes were the property of the Union Stockyards & Transit Company, used, maintained and operated by it in the performance of its duties and services as a common carrier of livestock.

19. The evidence in this case affirmatively shows that the

docks, chutes and loading pens and stockyards used, maintained and operated by the Union Stockyards & Transit Company, constituted the property devoted to public use and employed in conducting the business of the Union Stockyards & Transit Company, as a common carrier and as a connecting carrier of the railroad carriers transporting livestock thereto and therefrom, and same were not the terminals of such railroad carriers and were no part of the facilities of such railroad carriers, and the services performed in the operation and use thereof was not a service included in the transportation furnished by such railroad carriers, under and pursuant to their tariffs on file with the Interstate Commerce Commission.

20. The evidence shows that compensation for the service of loading and unloading livestock transported by the railroad carriers involved in this suit, to the Union Stockyards, Chicago, was included in the linehaul rate and terminal charge in the amount of 50c for loading and 25c for unloading each carload of such livestock, and the additional charge of 25c contained in the tariff of the Union Stockyards & Transit
155 Company effective May 21, 1917, was not included therein.

21. The place of delivery of the livestock in controversy was off of the lines of the railroad carriers operated by the Director General of Railroads under Federal Control and involved in this suit, and the service of loading and unloading such livestock was performed by a common carrier on whose property delivery was required to be made. There is no evidence in this case justifying a finding that the said railroad carriers should assume and pay any portion of such common carrier's charges, for the services it performed, in excess of the amounts provided for in their tariffs on file with the Interstate Commerce Commission.

22. The tariffs and livestock contracts of the railroad carriers, operated by the Director General of Railroads under Federal Control, and involved in this suit, provided that the rates were made in respect to the duty of the shipper or consignee to load and unload the same. The shippers and consignee were relieved of such burden at Union Stockyards, Chicago, in the sum of 50c for loading and 25c for unloading each carload of livestock, by reason of the absorption provisions of the railroad carriers tariffs to that effect, but the remainder of such burden rested and remained on the shipper and consignee.

23. The Interstate Commerce Commission did not acquire

or have jurisdiction to enter the order sued on against this defendant, and the pretended order furnishes no basis for a recovery against this defendant in this suit.

24. Under all of the evidence introduced in this cause, no verdict against this defendant, if returned by the jury, could be permitted to stand but must be set aside by the Court.

156 In presenting this motion, defendant reserves the right, in the event this motion be denied, to have this case submitted to the jury upon the special charges requested by him, and upon such other legal and proper charges as the court may give.

EDGAR R. HART
SIDNEY F. ANDREWS
A. A. MCLAUGHLIN
Attorneys for Defendant, Andrew W. Mellon, Director General of Railroads as Agent.

n. 9, 157 And on, to wit, the 9th day of January, 1930 came the defendants by their attorneys and filed in the Clerk's office of said Court a certain Motion of Defendant, Union Stock Yard & Transit Company For a Directed Verdict in words and figures following, to wit:

158 * * (Caption) * *

MOTION OF DEFENDANT, UNION STOCK YARD & TRANSIT COMPANY, FOR A DIRECTED VERDICT.

All parties having rested and the evidence being closed, defendant Union Stock Yard & Transit Company of Chicago now moves the Court to direct the jury to return a verdict in its favor and against all of the plaintiffs, on the following grounds:

1. The complaint in Docket 9977 before the Interstate Commerce Commission did not pray for the payment of reparation by this defendant to any of the plaintiffs herein, and the evidence is insufficient to sustain any award of reparation against said defendant and to said plaintiffs in Docket 12614 before the said Commission.

2. Said defendant in any event is not liable to plaintiffs upon any shipments which moved prior to February 25, 1919,

and the record is insufficient to sustain any award against said defendant and in favor of plaintiffs on shipments moving subsequent to said date.

3. The award and order of the Interstate Commerce Commission sued on in this case is void because the Interstate
159 Commerce Commission in making such award and order went outside the record made before it and considered substantial evidence not in said record.

4. The evidence is insufficient to support or sustain the award and order of the Interstate Commerce Commission sued on in this case.

5. The evidence in this case shows that said defendant in loading and unloading live stock at the Union Stock Yard, Chicago, Illinois, during all of the time involved in this case was not performing a common carrier service, and that with respect to such service the Interstate Commerce Commission had no jurisdiction.

6. The evidence in this case shows that all of the charges referred to in the award and order of the Interstate Commerce Commission sued on and involved in this case were not paid to this defendant, but to the Director General of Railroads, and that the only charges received by said defendant during the period involved in this case for loading and unloading live stock were charges authorized by this defendant's tariffs then on file with the Interstate Commerce Commission, and which had been approved by said Commission.

7. The evidence in this case is insufficient to show the amount, if any, paid on account of the loading and unloading charges in controversy and received by this defendant.

8. The evidence in this case is insufficient to show the amount of the liability, if any, existing in behalf of any plaintiff in this suit and against this defendant.

9. The evidence in this case shows that the evidence offered and received in the various hearings before the Interstate Commerce Commission in the proceedings in which the order and award sued on was made, was insufficient to justify or support such order.

160 10. The order and award of the Interstate Commerce Commission sued on herein operates to confiscate the property of this defendant, in violation of its constitutional rights.

11. The order and award of the Interstate Commerce Commission sued on herein is contradictory to and in violation of the previous finding of the Commission that the duty to load

and unload live stock at the Union Stock Yards, Chicago, rested upon the carriers hauling such stock to and from said market, and has the effect of imposing such duty upon this defendant.

12. The evidence in this case shows affirmatively that the plaintiffs in this suit do not have any interest or right sufficient to entitled them or any of them to maintain this suit or any suit to recover the charges sued for herein.

13. The evidence is insufficient to show a liability on the part of this defendant to any plaintiff in this suit in any amount.

14. The evidence is insufficient to show that plaintiffs or any of them have been damaged in any amount by the collection of the charges herein sued for.

15. The evidence shows that the plaintiffs and each of them do not have any right or title to any claim that may have arisen on account of the collection of the charges in controversy, and are without any right or authority to maintain this suit, and were without any right or authority to make complaint in their own names before the Interstate Commerce Commission on account of the collection of such charges, and the awarding of reparation to plaintiffs by said Commission was erroneous and contrary to law.

16. The evidence is insufficient to show or support the finding of the Interstate Commerce Commission that the docks and chutes of this defendant are or were its terminals used in the transportation of live stock.

161 17. The Interstate Commerce Commission did not acquire or have jurisdiction to enter the order sued on against this defendant, and said order furnishes no basis for a recovery against this defendant in this suit.

18. Under all of the evidence introduced in this cause no verdict against this defendant, if returned by the jury, could be permitted to stand, but must be set aside by the court.

In presenting this motion this defendant reserves the right, in the event this motion be denied, to have this case submitted to the jury upon special charges requested by it, and upon such other legal and proper charges as the Court may give.

WINSTON, STRAWN & SHAW
Attorneys for Defendant Union Stock Yard & Transit Company of Chicago.

162 And afterwards, to wit, on the 9th day of January 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward District Judge, appears the following entry, to wit: Enter 193

163 * * (Caption) * *

Thursday, January 9, 1930.

Present: Honorable Charles E. Woodward Judge of said Court.

This day again come the parties to this suit by their attorneys respectively and the Jury heretofore empaneled herein for the trial of said cause also come and thereupon at close of all the evidence It Is Ordered by the Court that the said Jury be permitted to separate until 2 P. M. January 13, A. D. 1930 whereupon the defendant Andrew W. Mellon Director General of Railroads as Agent of the President enters herein his motion for a directed verdict and thereupon the defendant Union Stock Yard & Transit Company by its attorney enters herein its motion for a directed verdict and after having heard the arguments of counsel It Is Ordered that said cause be and the same is hereby continued for further arguments to 10 A. M. January 10 A. D. 1930.

164 And afterwards, to wit, on the 10th day of January 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward District Judge appears the following entry, to wit:

165 * * (Caption) * *

Friday, January 10, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

This day again come the parties to this suit by their attorneys respectively and thereupon this cause coming on further to be heard upon the defendants' motion for a directed ver-

dict and the Court having heard arguments of counsel in part It Is Ordered that the defendants' motion for a directed verdict be and the same is hereby continued for further hearing to January 13 A. D. 1930.

166 And afterwards, to wit, on the 13th day of January, 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward District Judge, appears the following entry, to wit:

167 * * (Caption) * * *

Monday, January 13, 1930.

Present: Honorable Charles E. Woodward Judge of said Court.

This day again come the parties to this suit by their atorneys respectively and thereupon this cause coming on further to be heard upon the defendants' motion for a directed verdict and the Court having heard the arguments of counsel in part It Is Ordered that said cause be and the same is hereby continued for further hearing to January 14, 1930.

168 And afterwards, to wit, on the 14th day of January 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward District Judge, appears the following entry, to wit:

169 * * (Caption) * *

Tuesday, January 14, A. D. 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

This day again come the parties to this suit by their attorneys respectively and thereupon this cause coming on further to be heard upon the defendants' motion for a directed verdict and after arguments of counsel said motion is continued for further hearing to January 15 A. D. 1930.

170 And afterwards, to wit, on the 15th day of January 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

171 * * (Caption) * *

Wednesday, January 15, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

This day again come the parties by their attorneys respectively and the Jury heretofore empaneled herein for the trial of said cause also come and thereupon this cause coming on further to be heard on the defendants' motion for a directed verdict and the Court having heard the arguments of counsel in part It Is Ordered that said motion be and the same is hereby continued to January 16, A. D. 1930.

172 And afterwards, to wit, on the 16th day of January 1930, being one of the days of regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

173 * * (Caption) * *

Thursday, January 16, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

This day again come the parties by their attorneys respectively and thereupon this cause coming on further to be heard upon the defendants' motion for a directed verdict and the Court having heard the arguments of counsel in part It Is Ordered that said motion be and the same is hereby continued to January 17, A. D. 1930.

174 And afterwards, to wit, on the 17th day of January 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward District Judge, appears the following entry, to wit:

175 * * (Caption) * *

Friday, January 17, 1930

Present: Honorable Charles E. Woodward, Judge of said Court.

This cause coming on further to be heard upon the defendants' motion for a directed verdict and after arguments of counsel said motion is taken under advisement.

176 And afterwards, to wit, on the 20th day of January 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge(appears the following entry, to wit:

177 * * (Caption) * *

Monday, January 20, 1930.

Present: Honorable Charles E. Woodward Judge of said Court.

This day again come the parties to this suit by their attorneys respectively and the Jury heretofore empaneled herein for the trial of said cause also come and the usual hour of adjournment having arrived It Is Ordered that said Jury be permitted to separate until 2 P. M. January 23, A. D. 1930.

178 And afterwards, to wit, on the 23rd day of January, 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward District Judge, appears the following entry, to wit:

179 * * (Caption) * *

Thursday, January 23, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

This day again come the parties to this suit by their attorneys respectively and the Jury heretofore empaneled herein for the trial of said cause also come and the usual hour of adjournment having arrived It Is Ordered that said Jury be permitted to separate until 2 P. M. January 27, A. D. 1930.

180 And afterwards, to wit, on the 27th day of January 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof in said entitled cause, before the Honorable Charles E. Woodward District Judge, appears the following entry, to wit:

181 * * (Caption) * *

Monday, January 27, 1930.

Present Honorable Charles E. Woodward, Judge of said Court.

This day again come the parties to this suit by their attorneys respectively and the Jury heretofore empaneled herein for the trial of said cause also come thereupon It Is Ordered by the Court that the defendants' motion for a directed verdict be and the same is hereby continued to January 28, A. D. 1930.

It Is Ordered that the Jury be permitted to separate until 10 A. M. January 28, A. D. 1930.

182 And on, to wit, the 28th day of January, 1930 there was filed in the Clerk's office of said Court a certain Opinion in words and figures following, to wit:

Jan. 28, 183 * * (Caption) * *

On motion for a directed verdict.

OPINION OF JUDGE WOODWARD DELIVERED AND FILED IN U. S. DISTRICT COURT JAN. 28, 1930.

WOODWARD, *District Judge:*

Plaintiffs, one hundred three in number, members of The Chicago Live Stock Exchange, bring this suit against Union Stock Yards & Transit Company, a corporation, Andrew Mellon, Director General of Railroads as agent for the President, under section 206 of the Transportation Act of 1920, (49 USCA 74) against whom actions at law may be brought on causes of action arising out of the possession, use or operation by the President of the railroads and systems of transportation, of the A. T. & S. F. Ry. Co. and a number of other railroad companies, all of which were operated and controlled by the predecessors in office of the defendant, Andrew Mellon, as Director General, during the period of Federal control of railroads from December 28, 1917, to March 1, 1920. This suit is brought under Section 16 of the Act to Regulate Commerce (49 USCA 16) to recover from the defendants jointly $140,001.25, with interest thereon at six per cent per annum, awarded to plaintiffs in a reparations order entered by the Interstate Commerce Commission on December 12, 1927, which sum has not been paid. The Union Stock Yard & Transit Company and the Director General filed separate answers.
184 This controversy relates only to the period of Federal control.

The plaintiffs, on the trial, offered several reports and findings of the Interstate Commerce Commission, the reparations order based upon its findings—some matters stipulated by the parties and some oral testimony. The defendants offered the records, docket-entries, files and papers, of the Interstate Commerce Commission in the several proceedings alluded to, together with the transcripts of evidence taken on the several hearings before the commission as well as certain matters stipulated by the parties.

At the conclusion of all the evidence the Union Stock Yard & Transit Company and the Director General, separately, made motions to instruct the jury to return a verdict in favor

of the defendants, setting up, in the respective motions, the reasons why such motions, respectively, should be allowed.

The court is now ruling on such motions.

The Union Stock Yard & Transit Company is an Illinois corporation created by special act of February 13, 1865. It maintains and operates stock yards in Chicago, Illinois. It maintains and owns platforms, chutes and pens for the loading and unloading of live stock. Railroad cars are delivered by the transportation companies to its platforms for loading and unloading live stock. ~~*The physical acts of loading all live stock into railroad cars, and of unloading all live stock from railroad cars during the period of Federal control, including all live stock involved in this suit, were performed by employees of the Union Stock Yards & Transit Company.*~~ The property of the Union Stock Yard & Transit Company was not taken over or operated by the Government during the period of Federal control of railroads.

185

Prior to May 21, 1917, there was in force a tariff of the Union Stock Yard & Transit Company published and filed with the Interstate Commerce Commission whereby a charge of 25 cents for loading and 50 cents for loading each car of live stock was made by the Union Stock Yard & Transit Company on all cars of live stock unloaded and loaded at the Union Stock Yards.

This charge was absorbed by the railroads under what was known as the L. A. Lowrey Tariff. On May 21, 1917, the Union Stock Yard & Transit Company increased its charges to 50 cents for unloading and 75 cents for loading each car of live stock. Controversy immediately arose with the railroads as to the absorption of this extra 25 cents. Effective September 1, 1917 the Union Stock Yard & Transit Company filed its tariff cancelling this additional charge. However, the Interstate Commerce Commission suspended from time to time the cancellation, with the result that the higher rate was compelled to be collected. By reason of protests filed as to this tariff, it was set down for hearing under Investigation and Suspension Docket No. 1118.

186

On November 17, 1917, the Chicago Live Stock Exchange, a corporation, its members consisting of live stock commission merchants, and owners and raisers of cattle engaged in buying, selling, receiving and shipping live stock at the Union Stock Yards, acting on behalf of its members severally and collectively, filed with the Interstate Commerce Commission its complaint against the further maintenance of

the charge of 50 cents for unloading and 75 cents for loading each car of live stock at the Union Stock Yards. This complaint bears Docket No. 9977.

The complaint averred in substance that the charge of 50 cents for unloading and 75 cents for loading each car of live stock at the Union Stock Yards was unjust and unreasonable and in violation of the Act to Regulate Commerce. It prayed, among other things, that the defendant carriers be ordered to cease and desist making such charges and to put in force reasonable maximum rates and charges.

> "To order the defendant carriers to pay to the complainant's members and patrons by way of reparation for the unlawful charges * * * the sum of 25 cents per car * * * as an award of damages * * *".

The complainant did not name, except by way of description, any of the plaintiffs in this suit.

This complaint was consolidated with Investigation and Suspension Docket No. 1118. Answers were filed and a hearing was had on the cases as consolidated.

On February 11, 1919 the commission rendered its decision (52 I. C. C. 209) dismissing the complaint in Docket No. 9977 and discontinuing its investigation in Investigation and Suspension Docket No. 1118.

187

On March 31, 1919, The Chicago Live Stock Exchange and the Union Stock Yard & Transit Company filed petitions for a rehearing, which were allowed and the proceedings were reopened.

On July 15, 1920, the Commission rendered its decision, reported in 58 I. C. C. 1640. The findings of the Commission contained, among other things, the following finding:

> "We further find that shippers who paid and bore charges for unloading and loading live stock at the stockyards in addition to the rates to and from the stockyards, and who are parties of record herein, have been damaged in the amount of such charges and are entitled to reparation, with interest from the date of such payment. The exact amount of reparation due each shipper cannot be determined on this record, and they should comply with Rule V of the Rules of Practice."

Because of the delay encountered in adjusting the matter of reparation and with a view to meeting objections raised by counsel, a new complaint was filed with the Interstate Commerce Commission on February 25, 1921, and was known as Docket No. 12614.

In this complaint the Chicago Live Stock Commission is named the complainant. By paragraph I it states, among other things, that

"this complaint is brought on behalf of the members of complainant association, severally and collectively, and no behalf of the owners, consignors and consignees of shipments of said live stock to and from said Union Stock Yards."

188 By paragraph IV it names the individuals, firms and corporations who are its members, the paragraph concluding:

"That said above-named individuals, firms, copartnerships and corporations on their own behalf, as consignees of inbound shipments or as consignors of outbound shipments, or as factors or agents for the consignors of inbound shipments or as factors or agents for the consignees of outbound shipments, paid to the defendants each and all of the charges complained of as unlawful, as shown by their books and records, and charged said amounts of payments for loading and unloading in their accounts sales against the consignors and consignees."

A printed list containing many thousand names of persons, firms and corporations alleged to have shipped live stock to, or to have received live stock at, or to have shipped live stock from the Union Stock Yards during the time covered by the complaint was filed therewith and described therein as Appendix A.

The complaint names as defendants the Union Stock Yard & Transit Company, the Director General, and many railroad companies.

The issues in this complaint are in substauce the same as those in No. 9977.

The complainant prays, among other things, that

"Said defendants be required to pay to the individual firms or corporations, members of the Chicago Live Stock Exchange as factors and agents, for the use and benefit of the individuals, firms and corporations shown in Appendix A, or directly to said parties shown in Appendix A, by way of reparation for unlawful and unreasonable charges * * * *."

189 Extensive hearings were had, the case being consolidated with Docket No. 9977.

On June 2, 1925, the commission rendered its decision (100 I. C. C. 266).

The commission, in its report (100 I. C. C. 266) refer to

its decision in No. 9977 (58 I. C. C. 164) and review briefly what had transpired since that decision and say:

> "In the meantime, however, there had been raised by counsel for the Director General of Railroads, as agent, and the Union Stock Yard & Transit Company, hereinafter called the stockyard company, questions as to who were the parties of record entitled to reparation, and which among the defendants should satisfy any order of reparation which might be entered."

As to who are the complainants the Commission say on pages 267-268:

> "The complaint in No. 9977, filed November 17, 1917, brought in issue interstate shipments and named as complainant only The Chicago Live Stock Exchange. While the latter was described in the body of the complaint as "an association of persons, firms and corporations" whose membership consisted of "livestock commission merchants, owners and raisers of cattle engaged in the buying, selling, receiving and shipping of livestock in interstate and foreign commerce," and it was recited "that the said association represents every shipper and receiver of livestock at every station in the United States shipping to and from the public livestock market located at the Union Stock Yards in the City of Chicago, Illinois," hereinafter referred to as the stockyards, none of the parties so described were specifically named in the complaint. On June 16, 1919, counsel for complainant transmitted to us, apparently without service on the defendants, "a
> 190 printed list of farmers, stock raisers, and shippers throughout the country who have made shipments to and from the Chicago market during the past two years and who have paid the charges under investigation in this proceeding." However, the complainants and their shipments were identified by reason of the fact that none but members of the exchange were permitted to do business through the stockyards, participant in the transportation, where all such members were known and where their shipments were matters of record.
>
> "Because of the delay encountered in adjusting the matter of reparation, and with a view to meeting the various questions raised by counsel for defendants, the complaint in No. 12614 was filed February 25, 1921. The issues in this complaint are in substance the same as those in No. 9977. In addition it names the Director

General, as agent, as a defendant, alleges violation of the Federal control act, covers shipments within the State of Illinois during the period of Federal control, and also includes interstate shipments from the date of filing the first complaint to the end of the reparation period. It specifically names in the body thereof the 103 members of the complainant association and recites that it is filed in their behalf, severally and collectively, and also as factors and agents on behalf of the owners, consignors, and consigness of the shipments to and from the stockyards. All of the latter parties are listed in an appendix to the complaint."

Again the commission say on pages 269-270:

"Most of the reparation claimed is by the livestock commission merchants, members of the exchange, covering amounts collected from them for the unloading service at the stockyards. They seek reimbursement in their own names and right as parties to the transportation transactions who paid the charges to the defendant carriers and also as factors and agents for and on behalf of the livestock shippers who were the consignors. While it is admitted that in each and every instance the charge which was paid by the commission merchant was subsequently charged back and collected from the consignors, this would not affect the right of the complainant con-
191 signees to awards of reparation. There is a direct and well-established relation between the complaining members of the exchange and their shippers by which the former are fully authorized to present these claims and seek awards of reparation in their own names as factors and agents for such shippers. The commission merchant at the stockyards not only disposes of the shipper's stock at the best market and at such price as he deems best, but is his agent in the payment of freight and related charges, such as feeding, etc., and in the filing of claims for the overcharge and for loss and damage to the stock in transit. Defendants have frequently recognized this relationship by settling loss and damage claims with the commission merchants. The right of factors in their representative capacity to recover reparation in their own names for unlawful and unreasonable charges is settled." *Memphis Freight Bureau* v. *St. L. & S. F. R. R. Co.*, 57 I. C. C. 212.

The commission, therefore, finds, on page 270:

> "We find that the following individuals, co-partnerships, and corporations, parties of record, made the shipments as described in this and our preceding reports and paid the charges thereon, herein and heretofore found to have been unreasonable and unlawful; that they have been damaged in the amount of such charges and are severally entitled to reparation, as factors and agents for the shippers, with interest from date of payment."

Then follows a list of names of 103 members of the Chicago Live Stock Exchange, who are the plaintiffs in this suit. Commissioners Hall, Esch, Lewis and Cox concurred in the award only as they were constrained thereto by the decision of the majority of the commission in *Missouri Portland Cement Co.* v. *Director General*, 88 I. C. C. 492.

On December 12, 1927, the Commission entered its 192 order finding that the several complainants shown in the table were entitled to reparation from the defendants named in the amounts set opposite their respective names. The table contains awards separately for each of the plaintiffs herein and jointly against the Union Stock Yard & Transit Company and the Director General, specifying, as to the Director General, the amount of reparation due from the carriers severally, and ordered payment thereof on or before January 28, 1928, together with interest thereon at the rate of six per cent per annum from the respective dates of payment of the charges asserted.

The defendants in their motions for a directed verdict, raise many contentions which are common to both defendants and many other contentions which apply separately to the defendant on whose behalf they are made. In the view the court takes of this case it is unnecessary to summarize these various contentions or to discuss them seriatim.

At the outset the contention is made by both defendants in their respective motions to direct a verdict, that these plaintiffs are not the real parties in interest and have no standing to maintain this action.

This contention grows out of the following state of facts: The plaintiffs are 103 commission men, members of the Chicago Live Stock Exchange. The action is brought in their individual names. It is not, and does not purport to be, brought in any representative capacity. The plaintiffs do not sue as assignees as was done in the case of *Spiller* v. *A. T. & S. F. Ry. Co.*, 253 U. S. 117, 64 L. Ed. 810.

During the period covered by this action, live stock
193 was consigned by the farmers and producers from various points in this country to the several plaintiffs as consignees at the Union Stock Yards, Chicago, Illinois. The record shows the names of many thousand shippers from hundreds of points of shipment. The plaintiffs received and sold the live stock so consigned to them and collected the proceeds of the sales. From the gross proceeds of the sales the plaintiffs paid the freight, terminal, yardage, unloading and other charges, and, after deducting their commissions, remitted the net amount to the shippers. With the remittance of the net amount of sales the account was closed. As between the plaintiffs and the shippers all such accounts were closed long before the petition for reparation was filed with the Interstate Commerce Commission, and hence long before the institution of this suit.

Among the items deducted from the gross amount of sales was one of twenty-five cents for "unloading" each car of live stock at the Union Stock Yards. The Interstate Commerce Commission has found this charge to be unreasonable and in violation of the act to regulate commerce. It awarded reparation in the sum of $140,001.25 to the plaintiffs in this action. The award not having been paid, this suit is prosecuted.

The question, therefore, is squarely presented as to whether these plaintiffs are the proper parties to maintain this action.

The right to maintain this action is given by statute. The pertinent statutory provision is that found in Section 8 of the Act to regulate commerce (49 USCA 8) which reads as follows:

194 "In case any common carrier * * shall do * * any act, matter or thing * * prohibited or declared unlawful * *, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation."

This statute is an affirmation of the fundamental rule that the person in whom is the lawful right must bring suit. The party damnified is the real party in interest.

The question raised by these motions, and now under consideration, was raised repeatedly in the hearing before the Interstate Commerce Commission in this case. The record before the commission is replete with objections made by the defendants to an award to the plaintiffs on the ground that

the plaintiffs were not the proper parties to whom a reparation award should be made. This contention of the defendants was overruled by the commission. The commission in its order in this case, on June 2, 1925, (100 I. C. C. 266) finds on page 270 as follows:

> "We find that the following individuals, copartnerships, and corporations, parties of record, made the shipments as described in this and our preceding reports and paid the charges thereon, herein and heretofore found to have been unreasonable and unlawful; that they have been damaged in the amount of such charges and are severally entitled to reparation, as factors and agents for the shippers, with interest from date of payment."

This statement is followed by the names of the plaintiffs in this case. The order of the commission in this case is based upon a prior holding of the commission in the case of *Missouri Portland Cement Co.* v. *Director General,* 88 I. C. C. 492.

195 In the *Missouri Portland Cement Company* case it appeared that carloads of sand were sold f. o. b. complainant's plant at Memphis, Tennessee, and consigned to various consignees at different points. The complainant prepaid the switching charges but admitted that by separate invoices it subsequently collected from the consignees the amount so paid. The complainant contended that it paid and, as between it and the defendant, bore the charges on these shipments and that it is a proper party to bring the proceeding. The commission say:

> "Defendant in reply cites numerous cases in which we have held that the party who actually bore the charges, as such, is the only one entitled to recover. Defendant's statement of our practice in the past is accurate."

Under the above state of facts the commission held that the complainant, the consignor, although the excess charges were actually paid by the consignees, was the party injured and was entitled to recover reparation. The holding in the *Missouri Portland Cement Company case* is explained by the commission in the late case of *California Fruit Exchange* v. *American Railway Express Co.,* 155 I. C. C. 105, at page 107, as follows:

> "Contentions similar to those advanced by defendants here were advanced in *Missouri Portland Cement Co.* v. *Director General,* 88 I. C. C. 492. * * * Therein we found that in determining who is entitled to reparation

it is not necessary to go beyond the first step; that the first step is taken when the freight charges are paid; and that the fact that whoever paid in the first instance suffered no ultimate damage is not of controlling importance. In the absence here of the consignors who finally bore the charges, the inquiry need not extend further than to determine who paid the charges in the first instance."

196 Such holding, as the commission say in its report, reversed a long and uninterrupted series of decisions holding to the contrary. In the case of *Sloss-Sheffield Steel & Iron Co.* v. *L. & N. R. R. Co.*, 40 I. C. C. 739, 740, the commission summarize its holdings in the following language:

"The Commission has held without exception that where freight charges are paid by consignees but are charged back to the consignors, the consignees are not entitled to reparation. *Mountain Ice Co.* v. *D. L. & W. R. R. Co.*, 21 I. C. C. 45; *Commercial Club of Omaha* v. *A. & S. R. Ry. Co.*, 27 I. C. C. 302; *Traffic Bureau, Sioux City Commercial Club* v. *A. & S. R. R. Co.*, 37 I. C. C. 353; and other cases.

"In *Hygienic Ice Co.* v. *C. & N. W. Ry. Co.*, 37 I. C. C. 384, the Commission held that the party entitled to reparation is the one who finally bore the freight charges.

"In *Oden & Elliott* v. *S. A. L. Ry.*, 37 I. C. C. 345, the Commission held that the party entitled to recover is he who has either by himself or by another paid and borne the freight charges for the transportation service, and that the ultimate test as to who shall recover is the bearing of the freight charges for the transportation service."

If this case were decided in accordance with the earlier holdings of the commission it is clear that plaintiffs cannot maintain this suit. If, on the other hand, it is to be decided in accordance with the holding of the commission in the *Missouri Portland Cement Company case,* and forty or fifty similar holdings since the decision in that case, then the plaintiffs are the proper parties to maintain this suit.

197 Both parties rely upon the following cases in support of their positions, namely:

Southern Pacific Co. v. *Darnell-Taenzer Lumber Co.*, 245 U. S. 531, 62 L. Ed. 451;

L. & N. R. R. Co. v. *Sloss-Sheffield Co.* 269 U. S. 217.

The previous holdings of the commission were reversed in the *Missouri Portland Cement Company* case by reason of the

commission's interpretation of the decision of the Supreme Court in the case of *Southern Pacific Co.* v. *Darnell Taenzer Lumber Company, supra.*

The *Darnell-Taenzer* case, as the court understands it, did not involve the question as to who were proper parties complainant. The question was, whether, under the facts in that case, the plaintiffs who actually paid the excess charges, suffered any damage. Fully to understand the issues before the court in the *Darnell-Taenzer* case, reference must be had to the same case before the Circuit Court of Appeals and reported in 221 Fed. 890. The contention of the defendant was that the plaintiff had not suffered any damage, although an excess rate was charged, and collected, because

> "The advance in the freight rate has been added to the price paid by the consumer." (p. 892)

The Court say:

> "Defendants insist that this situation conclusively negatives the existence of pecuniary loss by the shippers."

In other words, the defendant contended that the con-
198 sumer, and not the shipper, alone was damaged by the payment of the excessive freight charges. It was to this contention that the Supreme Court, in the *Darnell-Taenzer* case, on page 533, addressed itself when it said:

> "The only question before us is that at which we have hinted; whether the fact that the plaintiffs were able to pass on the damage that they sustained in the first instance by paying the unreasonable charge, and to collect that amount from the purchasers, prevents their recovering the overpayment from the carriers. The answer is not difficult. The general tendency of the law, in regard to the damages, at least, is not to go beyond the first step. As it does not attribute remote consequences to a defendant, so it holds him liable if proximately the plaintiff has suffered a loss. The plaintiffs suffered losses to the amount of the verdict when they paid. Their claim accrued at once in the theory of the law, and it does not inquire into later events."

Apparently when the court say,

> "That the general tendency of the law, in regard to damages, at least, is not to go beyond the first step,"

and

> "that the law does not inquire into later events,"

the court addressed itself to the contentions of the defendant

that the plaintiff had suffered no loss because of its ability to pass on the excessive freight rates to the consumers. This conception of the language of the court is made clearer by the subsequent language wherein it is said:

> "The carrier ought not to be allowed to retain his illegal profit, and the only one who can take it from him is the one that alone was in relation with him and from whom the carrier took the sum."

199 As this court interprets the *Darnell-Taenzer* case, it simply holds that the court, in a suit on a reparation award, will not inquire into the commercial effect of the payment of an illegal freight rate. What the court refer to, in the *Darnell-Taenzer* case, is the economic incidence of the payment of the excessive charge. Who, in an economic sense, ultimately bears the payment is a matter into which the court will not inquire. The economic bearer of the burden, be he purchaser or consumer, is not a proper party plaintiff. Neither can the defendant absolve itself from the payment of damages because, in an economic sense, the plaintiff might add the excess price to his product and itself impose the burden or injury upon the consumer. From the opinion in the *Darnell-Taenzer* case it is clear that the plaintiffs there were the ones who actually paid the money and who, in the first instance, bore the burden. The *Darnell-Taenzer* case is, in the view of this court, not authority for either party to this cause. If it be considered an authority, it is in favor of the defendants.

However, the *Sloss-Sheffield* case, *supra,* is in point. In this case it appeared that the plaintiff was the consignor of all the shipments on which it was awarded reparations. The freight charges were not prepaid. The pig-iron embraced in the shipments was sold at a delivered price f.o.b. destination. At the various times when the pig-iron was delivered to the purchaser at the point of destination, the purchaser paid the freight bill on the delivery of the shipment and remitted to the plaintiff the amount of the bill for the delivered price
200 less the freight charges at the rate specified in the contract of sale.

The consignor was the plaintiff in the action. It was objected that the *Sloss-Sheffield Company* could not recover because it was not damaged by the excessive freight charges. With respect to that contention the court say, on page 235:

> "The Commission and the District Court found that the Sloss-Sheffield Company bore the transportation

charges and was damaged to the extent of the difference between the charges paid and those that would have accrued at the rates found reasonable. Both tribunals found further that all the iron was sold f. o. b. destination; that it was shipped to purchasers named as consignees on straight bills of lading; that it was invoiced and charged on the seller's books at the full delivered price; that, pursuant to arrangement between seller and purchaser, the consignee physically paid the freight upon the acceptance of the delivery; and that he was credited with this at the rate specified in the sales contract as a part payment of the purchase price, and remitted only the balance of the purchase price."

"The objection urged is not that the company failed to make specific proof of pecuniary loss—the failure held in *Pennsylvania R. R. Co.* v. *International Coal Mining Company,* 230 U. S. 184, 206, to be fatal in a suit under Sec. 2 for unjust discrimination, and in *Davis* v. *Portland Seed Co.,* 264 U. S. 403, to be fatal in a suit under Sec. 4 for violation of the long-and-short-haul clause. The carrier concedes, as it must under *Southern Pacific Co.* v. *Darnell-Taenzer Lumber Co.,* 245 U. S. 531, that a recovery for excessive freight charges can be had under Sec. 1 without specific proof of pecuniary loss, and that the measure of damages is the amount of the excess exacted. It was likewise settled by *Southern Pacific Co.* v. *Darnell-Taenzer Lumber Co.* (see 190 Fed. 659; 221 Fed. 890), that where goods are sold f. o. b. destination, it is ordinarily the seller who bears the freight who suffers from the excessive charge, and who consequently is entitled to sue."

201 In a footnote to the above quotation it is said:

"Such had been the uniform decision of the Commission" Citing many decisions of the Interstate Commerce Commission.

As the court reads and understands the *Sloss-Sheffield* case it approves the holdings of the Interstate Commerce Commission rendered prior to the holding in the *Portland Cement Company* case.

In the case of *Parsons* v. *Chicago & Northwestern Railway Co.,* 167 U. S. 447, 42 L. Ed. 231, the court, on page 460, say:

"The only right of recovery given by the I. C. C. act
9 to the individual is to the 'person or persons injured thereby, for the full amount of damages sustained in consequence of any of the violations of the provisions of this

act.' So, before any party can recover under the act he must show, not merely the wrong of the carrier, but that the wrong has in fact operated to his injury."

While this language is used with reference to a state of facts different from those in this record, yet it states a fundamental rule of law.

In a reparation case damages may be recovered by those who are the real and substantial parties in interest in the transaction in which illegal transportation charges have been made. The reparation is due to the person who has been required to pay the excessive charge as the price of transportation. The judgment must be in favor of those who pay the freight charges.

Who, in this case, paid and bore the freight charges? It seems obvious from the admitted facts that it was the farmer, producer and shipper of the live stock. It was his money,
202 and not the money of the commission man, which the carrier illegally retains. He paid the freight. It is true, that the manual operation of paying the freight was through the instrumentality of the commission man. But the commission man was using the money of the shipper and not his own money. The commission man was an agent, and, in making the payments, he made them out of the funds of the farmers and shippers. He disbursed no money of his own.

This case calls for the application of the fundamental rule that the proper person to bring an action is the person whose right has been violated. The court holds that the persons whose rights have been violated and whose money the defendants now illegally retain are the farmers, producers and shippers and not the commission man.

In its opinion, 100 I. C. C. 366, in referring to the right of the plaintiffs in this case to reparation, the Commission say, on page 270:

> "The right of factors, in their representative capacity, to recover reparation in their own names for unlawful and unreasonable charges is settled."

In support of this conclusion the commission cite *Memphis Freight Bureau* v. *St. L. & S. F. R. R. Co.*, 57 I. C. C. 212. The facts in that case are substantially identical with the facts in this case. The Freight Bureau, on behalf of its members who were factors, prosecuted before the Commission claims of 3500 growers of cotton on which excessive charges had been paid. The Commission found
203 "That the complainant factors, in their representative capacity, are entitled to the reparation with interest."

The Commission men filed claims in the receivership proceeding in the District Court for the Eastern Division of the Eastern District of Missouri. A certified copy of the memorandum opinion of Judge Sanborn was used in the argument and has been handed to the court. In his opinion Judge Sanborn says:

> "The intervenors, however, pray that the payment be made to the factors. The defendant objects that the factors were not the parties damaged, the Commission so held, and there is substantial—nay, conclusive evidence that the factors did not, and that the country growers and shippers did suffer and bear the substantial damages. Notwithstanding this fact and notwithstanding the fact that the Commission itself reported and found that the factors in their representative capacity were entitled to the reparation. Its subsequent order was that the receivers be authorized and directed to pay the reparation to the factors without making any reference in that order to their representative capacity."

Judge Sanborn further says:

> "The factors insist that this court should order the amount of the reparation paid to them. But since they did not, and the growers and shippers did suffer and bear the damages the court is not pursuaded that they have either the property rights in the claims for damages or the authority to release or assign them. While, so long as a factor is engaged in discharging his active duty of paying the freight charge including the overcharge and remitting the proceeds, he may have authority to settle, compromise or release the claim of his principal for
> 204 the refund of the overcharge, because during that time he has a pecuniary interest in the claim for the refund, yet, when such a transaction is completed, without more, the property right of the shipper in the claim for the refund becomes exclusive and the factor's right or power to release, discharge, or assign it no longer exists."

But the plaintiffs contend that the factors are the representatives of the farmers, producers and shippers and in accordance with the rules of The Chicago Live Stock Exchange and with the practice and customs of the exchange with the defendants, suit may be maintained in its name. This contention is well stated by the Commission in its opinion in this case (100 I. C. C. 266), on pages 269-270:

> "the Commission merchant at the stockyards not only

disposes of the shipper's stock at the market and at such price as he deems best, but is his agent in the payment of freight and related charges, such as feeding, etc. and in the filing of claims for overcharge and for loss and damage to the stock in transit. Defendants have frequently recognized this relationship by settling loss and damage claims with the commission merchants."

This contention cannot be maintained. The right to maintain a suit is that given by the statute to "the person or persons injured." The right, therefore, to maintain a suit is given by law. Any act, practice or custom, either of The Chicago Live Stock Exchange, of the commission man or of the carriers could not confer the right to maintain the suit. In the case of *Mackay* v. *Randolph Macon Coal Co.* 178 Fed. 881, the court, among other things, says:

"Who may maintain a suit is a matter of law, not subject to be controlled by the private conventions of the parties."

205 To the same effect are the following cases:

Gusman v. *Marrero,* 180 U. S. 81;
In re Ellis, Inc., 342 Fed. 158-159 (Dist. Ct. N. J.);
Fitkin v. *Century Oil Company,* 16 Fed. (2d) 22-24;
State of Georgia to Use of Fidelity & Deposit Co. v. *Bank of Quitzan,* 45 S. E. 236 (Ga.);
Terrell v. *Stevenson,* 25 S. E. 352 (Ga.);
Baxter's Executors v. *Baxter, et al.,* 10 Atl. 1814 (N. J.);
Central Railroad & Banking Company v. *Brunswick, etc.,* 135 S. E. 520 (Ga.).

In the case of *Fitkin* v. *Century Oil Co.* 16 Fed. (2d) 22, the court say:

"The right to maintain a suit is a matter of law, and not subject to be controlled by private conventions of the parties. Suits must be in the name of the real parties in interest. The only exception to this rule is where a trustee of an express trust may maintain an action in his own name on behalf of the beneficiaries. There the trustee must be the holder of the property or obligation out of which the action arises, or a person with whom or in whose name a contract is made for the benefit of another may maintain an action upon the contract. A trustee under a mortgage comes within this exception as to the security, but not as to the bonds or notes, for they are not payable to the trustee. * * * The mere fact that

a trustee holds legal title to security does not make it in equity a creditor with respect to the debt itself."

Plaintiffs further contend that as factors they may maintain the suit because they have an interest in the recovery.

That a factor has authority to bring suit in his own name for damage or injury to goods in his business as a factor, or to recover the purchase price where he has an interest in the way of commissions or advancements and in other circumstances where he is a trustee of an express trust, there
206 seems to be no doubt. The right to sue, however, is in each instance based upon his interest or duty in the protection of the property or the proceeds of the sale.

In *Beardsley* v. *Schmidt,* 98 N. W. 235 (Wis.) in recognition of such rule and right, the court say:

"He has, as against his principal, in the absence of some stipulation to the contrary, a special interest therein and the proceeds thereof and the right to control the same until he receives his compensation for services rendered in respect thereto."

It will be noted that such rights of the factor are limited to the period

"before he receives his compensation for services rendered in respect thereto."

In the case at bar no situation bringing the plaintiffs within the well recognized rule as to suits by factors is presented. All charges, including commissions, including the one in controversy in this case, and including commissions had been paid out of the proceeds of the sale—the money of the shipper—and the net proceeds had been remitted to the shipper. Moreover, it is clear from the testimony before the commission, and now before the court, that if plaintiffs recover in this case, the plaintiff will not have a beneficial interest in the money so obtained. This is evident from the testimony of D. C. Mosier, Vice President of The Chicago Live Stock Exchange and chairman of the Transportation Committee given at the examination held at Chicago, Illinois, before Examiner Hosmer on July 14, 1921, in which he said that when this reparation is collected, if it is collected:

207 "The shipper and producer will get every cent. Not one dime, not one nickel, will be taken by The Chicago Live Stock Exchange or any of its members for the collection of this amount." (p. 37)

again, on the same day, he said:

"If this money was remitted to the commission man as

agent for the shipper, he would remit the net amount to the shipper or customer. By net amount there, I mean the full reparation. There will be no charges deducted for the collection." (p. 38)

It is apparent that the plaintiffs, commission men, have no legal interest in this proceeding. They are purely volunteers. They have adopted themselves as convenient agents to secure the recovery. They are not the ones who have been damnified by the imposition and collection of the excessive charge.

The court holds that the plaintiffs in said case cannot maintain this motion.

In must follow, and it is the ruling of the court, that the motions to direct a verdict made by the defendant, Andrew W. Mellon, Director General, as agent, etc. and a similar motion made by the Union Stock Yard & Transit Company, defendants, be and each of them is allowed. The court will instrust the jury to find the issues for the defendants.

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208 And on, to wit, the 28th day of January, 1930, there was filed in the Clerk's office of said Court a certain Verdict in words and figures following, to wit: Filed J 1930.

209 * * (Caption) * *

At the direction of the Court we, the jury, find the issues against the plaintiffs and in favor of the defendants.

WALTER B. HULL
ED. BLUNKE
FRED KIHM
RICHARD H. COOPER
LOUIS SOLAR
LLOYD J. MAYNARD
FRANK MEISINGER
ROY D. LEONARD
CLARENCE W. ANDERSON
JOHN D. HAINES
W. E. WILLIAMS
JACK H. BRADFORD

Jan. 28, 210 And afterwards, to wit, on the 28th day of January, 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

211 * * (Caption) * *

Tuesday, January 28, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

This day again come the parties to this suit by their attorneys respectively and the Jury heretofore empaneled herein for the trial of said cause also come whereupon the defendants Andrew W. Mellon, Director General of Railroads as agent and the Union Stock Yard and Transit Company by their attorneys enter herein their motion for a directed verdict which motions are allowed to which ruling of the Court the defendants by their attorneys here and now duly except thereupon the Court instructs the Jury and the Jury say, We the Jury find the issues against the plaintiffs and in favor of the defendants to which ruling of the Court the plaintiffs by their attorneys here and now duly except whereupon the plaintiffs by their attorneys enter herein their motion for a new trial in said cause which motion is overruled and a new trial denied to which ruling of the Court the plaintiffs by their attorneys here and now duly except whereupon the plaintiffs by their attorneys enter herein their motion in arrest of Judgment which motion is also overruled to which motion of the Court the plaintiffs by their attorneys here and now duly except therefore it is considered by the Court that the plaintiffs take nothing by their aforesaid action that the defendants go hence without day do have and recover of and from the plaintiffs their costs and charges in this behalf expended and have execution therefor thereupon the plaintiffs having entered their exceptions herein pray an appeal from the above judgment of this Court to the United States Circuit Court of Appeals for the Seventh Circuit which is allowed upon the plaintiffs
212 filing herein cost bond in the penal sum of Five Hundred Dollars ($500.00) to be approved by the Court within thirty days from this date and ninety (90) days time from this date is allowed the plaintiffs within which to file their Bill of Exceptions herein.

213 And on, to wit, the 31st day of January, 1930, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court a certain Motion to Vacate Orders of January 28, 1930 and Affidavits in Support Thereof in words and figures following, to wit:

214 * * (Caption) * *

Now Come the plaintiffs in the above-entitled case, by their attorneys, Sims Godman & Stransky, and move the court to vacate and set aside the following orders and judgment entered and appearing of record in this case on Tuesday, January 28, 1930:

Order denying and overruling plaintiffs' motion for a new trial;

Order overruling and denying plaintiffs' motion in arrest of judgment;

Judgment on the verdict in favor of defendants and against plaintiffs and against plaintiffs for costs;

Orders allowing appeal, fixing time for bill of exceptions and amount of cost bond.

Plaintiffs by their said attorneys further respectfully request the court to enter this motion and set the same down for hearing and argument on some future date convenient to the court.

In support of said motion there is presented and filed herewith the affidavits of Elwood G. Godman, Esq., and Clair R. Hillyer, Esq.

SIMS, GODMAN & STRANSKY
Attorneys for Plaintiffs.

215 * * (Caption) * *

State of Illinois } ss.
County of Cook. }

ELWOOD G. GODMAN, being first duly sworn, on oath, deposes and says:

I am a practicing lawyer in Chicago, Illinois and a member of the firm of Sims Godman & Stransky, attorneys at law, and one of the attorneys for the plaintiffs in the above-entitled

case and in association with Clair R. Hillyer, Esq., conducted the trial of the above-entitled case before the District Court of the United States, for the Eastern Division of the Northern District of Illinois, His Honor, Judge Woodward, presiding, and in which case on January 28, 1930, at the direction of the court, the jury returned a verdict in favor of the defendants and against the plaintiffs in said case. That immediately upon the return of the verdict by the jury as aforesaid, a motion for a new trial was made and without argument thereon overruled and a motion in arrest of judgment then made and without argument thereon overruled and exceptions duly taken and allowed to the action of the court in so overruling said motions, and judgment was rendered by the court upon the verdict and for costs against the plaintiffs. A lengthy
216 written opinion was rendered by the court immediately prior to directing the jury to return a verdict as aforesaid in favor of the defendants and at the time when the motion for a new trial was made there was not sufficient time in which to digest and analyze the lengthy opinion thus rendered to enable counsel to properly present and argue the grounds existing in support of said motion for a new trial. The case involves very important principles of law and the decision of the court denies to the plaintiffs the right which they assert to recover from the defendants a large amount of money, towit, in excess of Two Hundred Thousand Dollars ($200,000.), which amount had been awarded to them by the Interstate Commerce Commission as reparations for excessive freight charges illegally collected by the defendants.

Since the decision of the court a careful analysis and study of the written opinion of the colrt leads counsel to believe that the motion for a new trial has substantial grounds proper to be presented in argument to the court in support thereof, and inasmuch as the decision was rendered on January 28, 1930 and the term of court is about to expire, affiant believes that the ends of justice will be advanced and served if the motion presented herewith to vacate the judgment entered on January 28, 1930 as above stated and to vacate the orders overruling plaintiffs' motion in arrest of judgment and plaintiffs' motion for a new trial be allowed, so that the court may be further advised in respect to the grounds which may properly be urged in support of said motion for a new trial.

Affiant does not mean to intimate by the statements herein that the court arbitrarily denied counsel the right to be heard in support of the motion for a new trial, but to merely state that there had not been sufficient time in which to analyze and

digest the court's opinion to enable counsel to advise the
217 court of the legal reasons and arguments which could be
properly called to the court's attention in support of said motion for a new trial.

Further affiant sayeth not.

ELWOOD G. GODMAN.

Subscribed and sworn to before me, a Notary Public in and for the County and State aforesaid, this 31st day of January, A. D. 1930.

DONALD B. HATMAKER
Notary Public.

My commission expires February 27, 1933.

State of Illinois }
County of Cook. } ss.

CLAIR R. HILLYER, being first duly sworn, deposes and says that he has read the foregoing affidavit of Elwood G. Godman, Esq., and was associated with Mr. Godman in the trial of the above-entitled case and knows the facts and joins in said affidavit of Mr. Godman and adopts the same as his own.

Further affiant sayeth not.

CLAIR R. HILLYER

Subscribed and sworn to before me, a Notary Public in and for the County and State aforesaid, this 31st day of January, A. D. 1930.

DONALD B. HATMAKER
Notary Public.

My commission expires February 27, 1933.

218 And afterwards, to wit, on the 31st day of January, 1930, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

Jan. 31, 219 • • (Caption) • •

Friday, January 31, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

This day come the plaintiffs by their attorneys and enter herein their motion to vacate and set aside the orders heretofore entered herein on January 28, A. D. 1930 as set forth in the plaintiffs' written motion which motion is entered and set for hearing March 3, A. D. 1930.

Feb. 27, 220 And afterwards, to wit, on the 27th day of February, 1930, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

221 • • (Caption) • •

Thursday, February 27, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

On motion of plaintiffs' attorney It Is Ordered that the motion to vacate the order heretofore taken and entered herein of record be and the same is hereby continued from March 3, A. D. 1930 to March 28, A. D. 1930.

222 And afterwards, to wit, on the 21st day of March, 1930, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

223 * * *(Caption)* * * Entered 1930.

Friday, March 21, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

On motion It Is Ordered that the plaintiffs' motion to vacate the orders of January 28, A. D. 1930 and the affidavits in support of motion now set for March 28, A. D. 1930 be and the same is hereby continued and reset for hearing April 11, A. D. 1930.

224 And afterwards, to wit, on the 7th day of April, 1930, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit: Entered 1930.

225 * * (Caption) * *

Monday, April 7, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

On motion It Is Ordered by the Court that the motion to vacate the orders heretofore taken and entered herein of record January 28, A. D. 1930 be and the same is hereby continued to April 18, A. D. 1930.

226 And on, to wit, the 11th day of April, 1930 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court certain Reasons in Support of Motion to Vacate and Set Aside Orders Entered January 28, 1930 Motion to Amend Petition Amendment to Petition in words and figures following, to wit:

r. 11, 227 * * (Caption) * *

REASONS ASSIGNED IN SUPPORT OF MOTION TO VACATE AND SET ASIDE ORDERS ENTERED IN THE ABOVE ENTITLED CAUSE ON JANUARY 28, 1930.

Now come the plaintiffs in the above entitled cause, by their attorneys, Sims, Godman & Stransky, and in support of and supplementary to their motion heretofore filed to set aside the following orders and judgment entered and appearing of record in this case on Tuesday, January 28, 1930,

1. Order denying and overruling plaintiffs' motion for new trial;

2. Motion overruling and denying plaintiffs' motion in arrest of judgment;

3. Judgment on the verdict in favor of defendants and against the plaintiffs, and against the plaintiffs for costs;

4. Orders allowing appeal, fixing time for bill of exceptions and amount of cost bond;

represent and show unto the court that on Tuesday, January 28, 1930, His Honor, Judge Woodward, presiding, announced his decision relative to a motion made at the close of all of the testimony in said cause to direct the jury sworn and im-
228 paneled in said cause to return a verdict in favor of the defendants and against the plaintiffs, and thereupon read a length written opinion setting forth particularly the reasons for his decision granting said motion; that immediately after reading his said written opinion His Honor, Judge Woodward, instructed or directed the jury impaneled and sworn to try the issues in the said case to return a verdict in favor of the defendants and against the plaintiffs in said case; that said jury thereupon returned into open court, pursuant to said instruction and direction of the court, its verdict in favor of the defendants and against the plaintiffs in the case; that thereupon the plaintiffs verbally made a motion for a new trial, which motion was thereupon without argument or discussion overruled; that thereupon the plaintiffs verbally made a motion in arrest of judgment, which motion was also without argument or discussion overruled; that thereupon the court directed that judgment be entered in favor of the defendants and against the plaintiffs and against the plaintiffs for costs, and thereupon entered orders allowing an appeal to the plain-

tiffs, fixing the time for the filing of bill of exceptions and the amount of cost bond.

Plaintiffs, however, disclaim any intimation or insinuation that His Honor, Judge Woodward, arbitrarily denied counsel the right to be heard in support of said motions, because such is not the fact. Plaintiffs, however, represent to the court that the attorneys for the plaintiffs did not have sufficient time, prior to making said motions, to digest and analyze the lengthy opinion of His Honor, Judge Woodward, so as to then present to the court such arguments and motions as might be necessary and appropriate to meet or overcome
229 the reasons assigned by the court in its opinion for holding against plaintiffs; that after counsel had studied and analyzed the opinion of His Honor, Judge Woodward, it became apparent to counsel that the holding of the court directing a verdict in favor of the defendants and against the plaintiffs was based solely on the ground that plaintiffs had filed said petition in the above entitled cause in their individual capacities and that the proof offered in the case showed that the persons who were injured by the charging of the alleged excessive, unreasonable and unlawful loading and unloading charges set forth in said petition were the shippers of live stock who ultimately bore said charges and not the plaintiffs named in said petition who represented said shippers in the various shipments of live stock mentioned and set forth in said petition; that the attorneys for said plaintiffs, after studying and analyzing the opinion of His Honor, Judge Woodward, and after a careful investigation of the facts in this case and a study of the law with reference to their right to amend the petition herein, came to the conclusion that by a proper amendment of the petition filed in the above entitled cause changing the capacity in which plaintiffs bring this suit the cause of action set forth in the petition filed herein may be properly maintained, in accordance with the opinion of the court; that thereafter at the same term of court in which the above-mentioned orders of said court were entered, plaintiffs filed their said motion to vacate and set aside said orders entered as aforesaid on Tuesday, January 28, 1930.

Plaintiffs further represent that they have duly filed in this cause their verified motion to amend the petition filed in
230 this cause, particularlly setting forth the facts and circumstances with reference to the relationship existing between themselves and upwards of one hundred seventy-four thousand (174,000) shippers whom said plaintiffs represented in the various shipments of live stock in relation to which the

excessive, unlawful and unreasonable charges set forth in the petition in this case arose, and showing particularly the capacity in which said plaintiffs appeared before said Interstate Commerce Commission and procured from said Interstate Commerce Commission the order of reparation in the sum of One Hundred Forty Thousand and One Dollars and Twenty-five Cents ($140,001.25), as set forth in the petition herein; that a copy of said verified motion to amend the peition herein is hereto attached and made a part of this motion.

Plaintiffs further represent that this motion to set aside and vacate the said orders entered as aforesaid by this Honorable Court on the 28th day of January, 1930, is made in good faith in order that said verified motion to amend said petition changing the capacity in which said plaintiffs bring this suit may be considered and passed upon by this Honorable Court.

Plaintiffs in seeking to have said orders so entered as aforesaid on Tuesday, January 28, 1930, vacated and set aside in order that they may be allowed to file and have considered and passed upon their said motion to amend their said petition, respectfully reserve the right, in the event said motion to set aside said orders of January 28, 1930, is denied, to argue before this court and to contend in any court of review that
231 the action of His Honor, Judge Woodward, in instructing the jury to return a verdict in favor of the defendants and against the plaintiffs was and is erroneous.

SIMS, GODMAN & STRANSKY
Attorneys for Plaintiffs.

EDWIN W. SIMS
ELWOOD G. GODMAN
FRANKLIN J. STRANSKY
CLAIR R. HILLYER
Of Counsel.

232 * * (Caption) * *

MOTION TO AMEND PETITION.

Now come the plaintiffs in the above-entitled cause, by Edwin W. Sims, Elwood G. Godman, Franklin J. Stransky and Clair R. Hillyer, their attorneys, and respectfully petition the court for leave to amend their petition filed in the above-entitled cause on the 8th day of December, A. D. 1928, in accordance with the draft of said proposed amendment hereto attached and made a part of this motion.

Your petitioners hereby represent to the court as grounds for granting leave to amend said petition filed in the above-entitled cause, as aforesaid, on the 9th day of December, A. D. 1828, the following facts, viz:

That prior to May 21, 1917, there was in effect a tariff published and filed with the Interstate Commerce Commission by the Union Stock Yard and Transit Company, one of the defendants in the above-entitled cause, which provided that
233 charges of twenty-five cents (25c) for unloading each car of live stock and fifty cents (50c) for loading each car of live stock would be assessed by said defendant, the Union Stock Yard and Transit Company, on all cars of live stock loaded or unloaded by it at the Union Stock Yards in Chicago, Illinois; that there was also in effect another tariff published and filed with the Interstate Commerce Commission, to which the following named railroads were parties, viz: The Atchison, Topeka & Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Railroad Company; The Chesapeaks and Ohio Railway Company of Indiana; The Chicago and Alton Railroad Company, and William W. Wheelock and William G. Bierd, Receivers; Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago Junction Railway Company; Chicago, Milwaukee and St. Paul Railway Company, and H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers; The Chicago, Rock Island and Pacific Railway Company; Chicago Terre Haute & Southeastern Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Grand Trunk Western Railway Company; Illinois Central Railroad Company; Indiana Harbor Belt Railroad Company; The Michigan Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; New York Central Railroad Company; New York, Chicago & St. Louis Railroad Company; The Pennsylvania Railroad Company; Pere Marquette Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and Harry A. Dunn, Receivers; and
Wabash Railway Company, all of which railroads and sys-
234 tems of transportation were operated and controlled by the predecessors in office of said Andrew W. Mellon dur-

ing the period of federal control of railroads, to-wit: December 28, 1917, to March 1, 1920; that all of said railroad companies and corporations last named have and during said period of federal control had systems of transportation and roads running through the Eastern Division of the Northern District of Illinois, with the exception of The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and Harry A. Dunn, Receivers, which railroad company is now a part of the system of the New York, Chicago & St. Louis Railroad Company, and which system has a road running through the Eastern Division of the Northern District of Illinois; that said last-mentioned tariff, to which said railroads were parties, provided that the sum of twenty-five cents (25c) for unloading each car of live stock and fifty cents (50c) for loading each car of live stock would be absorbed and paid by said railroad companies, respectively, to said Union Stock Yard and Transit Company on all cars of live stock loaded or unloaded by that company at said Union Stock Yards and shipped into said Union Stock Yards by said railroads; that said last-mentioned tariff was and is known as Agent L. A. Lowry's Tariff 20-J, I. C. C. No. 37, and supplements thereto.

That effective May 21, 1917, the defendant the Union Stock Yard and Transit Company filed with said Interstate Commerce Commission its tariff I. C. C. No. 2, whereby it increased said charges from twenty-five cents (25c) per car for unloading to fifty cents (50c) per car for unloading, and from fifty cents (50c) per car for loading to seventy-five cents (75c) per car for loading; that no tariff was filed with said Interstate Commerce Commision by said railroads absorbing said in-
235 crease in said unloading and loading charges, and therefore all shippers and receivers of live stock were, after May 21, 1917, compelled to pay and did pay to said defendant the Union Stock Yard and Transit Company and to said railroads said increase in the charge, viz:—twenty-five cents (25c) per car for unloading and twenty-five cents (25c) per car for loading, in accordance with said increase created by said tariff I. C. C. No. 2 filed as aforesaid with said Interstate Commerce Commission by said defendant Union Stock Yard and Transit Company; that effective with the taking over of said railroads under federal control, December 28, 1917, all shippers and receivers of live stock to and at said Union Stock Yards were compelled to and did pay the respective Directors General of Railroads appointed by the President of the United States in accordance with the law the said increase of twenty-

five cents (25c) per car for unloading and the said increase of twenty-five cents (25c) per car for loading; that during the said period from December 28, 1917, to March 1, 1920, the stock yards of the said defendant the Union Stock Yard and Transit Company were the terminals of the predecessors in office of the said defendant Andrew W. Mellon in each of the shipments of live stock hereinafter referred to and on which the sum of fifty cents (50c) per car was exacted for unloading and the sum of seventy-five cents (75c) per car was exacted for loading; that upon the filing by said Union Stock Yard and Transit Company of its said tariff Supplement No. 1 to I. C. C. No. 6 there were filed with said Interstate Commerce Commission formal protests against said tariff, whereupon said Interstate Commerce Commission from time to time thereafter suspended the operation of said tariff and set the matter down for hearing under its Investigation and Suspension Docket No. 1118.

That on or about October 2, 1917, the Chicago Live
236 Stock Exchange, on behalf of its members and others engaged in the buying, selling and shipping of live stock to and at the Union Stock Yards at Chicago, Illinois, filed a complaint in writing with the Interstate Commerce Commission, alleging and charging said loading and unloading charges so fixed in said tariff I. C. C. No. 2, filed with said Interstate Commerce Commission by said defendant the Union Stock Yard and Transit Company and effective May 21, 1917, as aforesaid, to be unlawful, unjust and unreasonable under the Interstate Commerce Act; that the said Interstate Commerce Commission thereupon docketed said complaint under Interstate Commerce Commission Docket No. 9977; that the said carriers hereinabove specifically named, which were made defendants in said Case No. 9977 before said Interstate Commerce Commission, are the same carriers and railroads which are named in said petition filed in this court on the 8th day of December, A. D. 1928, as aforesaid; that said corporate carriers and railroads filed their answers to said complaint in said case No. 9977 before said Interstate Commerce Commission and the issues in said case were duly made; that said case Docket No. 9977 and said case Investigation and Suspension Docket No. 1118 were, thereafter, by appropriate proceedings, duly consolidated before said Interstate Commerce Commission for hearing; that thereafter a full hearing was had with reference to said cases on or about February 11, 1919, at which hearing representatives

of said Chicago Live Stock Exchange and of said corporate carriers and railroads were present and participated therein; that thereafter said Interstate Commerce Commission issued its report and decision in said consolidated cases and dismissed said complaint, said report and decision being reported in 52 I. C. C. 209, attached to the petition heretofore filed
237 in this court on the 8th day of December, A. D. 1928, and therein designated Exhibit "C" to said petition and being made a part of said petition; that on or about April 14, 1919, upon petition of the complainant in said complaint Docket No. 9977 for rehearing and application to amend its complaint by making the Director General of Railroads a party defendant, the said Interstate Commerce Commission issued an order in said Docket No. 9977 and said Investigation and Suspension Docket No. 1118, in words and figures as follows:

"Supplemental Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of April, A. D. 1919.

No. 9977

Chicago Live Stock Exchange

vs.

The Atchison, Topeka & Santa Fe Railway Company *et al.*
Investigation and Suspension Docket No. 1118.

In the Matter of the Investigation and Suspension of Live Stock Loading and Unloading Charges at Chicago, Ill.

Upon further consideration of the records in the above-entitled proceedings, of petition for rehearing filed by the Chicago Live Stock Exchange and Union Stock Yard & Transit Company, and of application of the Chicago Live Stock Exchange to amend its complaint by making the Director General of Railroads a party defendant:

It Is Ordered, That these proceedings be, and they are hereby, reopened for further hearing, on the question of the amount of the loading and unloading charges for live stock at the Chicago stock yards, and the amount of such charges, if any, that should be imposed upon shippers of live stock, or

should be absorbed by the defendants and whether the Chicago Stock Yards are terminals of the Chicago Junction Railway Company, and whether the tariff arrangements between
238 the Union Stock Yard & Transit Company and the other defendants with respect to the delivery and handling of live stock at the Union Stock Yards in Chicago are in compliance with the act.

It Is Further Ordered, That the petition of the Union Stock Yard & Transit Company, so far as it seeks a reopening of the case for the purpose of reconsideration of the finding that it is a common carrier be, and it is hereby, denied.

It Is Further Ordered, That Walker D. Hines, Director General of Railroads, be, and he is hereby, made an additional party respondent herein.

It Is Further Ordered, That a copy of this order be served upon each of the parties to these proceedings.

And It Is Further Ordered, That these proceedings be, and they are hereby, assigned for further hearing on May 20, 1919, ten o'clock a. m., at United States Court Room, Chicago, Ill., before Examiner Gerry.

By the Commission:

GEORGE B. MCGINTY,
(Seal) *Secretary.*".

That thereafter said consolidated case, Docket No. 9977, and said Investigation and Suspension Docket No. 1118, duly consolidated as aforesaid, were reheard by said Interstate Commerce Commission, the said Director General of Railroads being duly represented and taking an active part in said proceedings; that thereafter, on or about July 15, 1920, said Interstate Commerce Commission issued its report on further hearing reported in 58 I. C. C. 164, and found that the said unloading and loading charges were unlawful and in violation of the Interstate Commerce Act, said decision and report being attached to the said petition heretofore filed in this court in this cause and there designated Exhibit "B" and made a part of said petition by reference; that on February 25, 1921, there was duly filed with said Interstate Commerce Commission a complaint for reparation on behalf of upwards of one hundred seventy-four thousand (174,000)
239 shippers of live stock who had been damaged by the assessment and collection of said loading and unloading charges hereinabove set forth in the amount of such charges paid for them; that said complaint was given Interstate Com-

merce Commission Docket No. 12614; that said complaint for reparation was filed by the following named persons, or their legal predecessors, who were members of said Chicago Live Stock Exchange between the dates of December 28, 1917, and February 28, 1920, when said excessive and unreasonable loading and unloading charges were paid, and who are the plaintiffs named in Paragraph 2 of the petition herein:

Geo. J. Adams and A. W. Kitchen, copartners trading as Adams & Kitchen.

John G. Adler and Alfred E. Adler, copartners trading as Adler Sons & Company.

Alexander, Conover and Martin, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

John A. Babcock, an individual trading as John A. Babcock & Company.

Fred L. Heyne and E. H. Baker, copartners trading as Baker, Heyne & Company.

W. A. Peterson, trading as Bacon, Peterson & Company.

Bowles Live Stock Commission Company, a corporation organized and existing under the laws of the State of West Virginia with its principal place of business at Chicago in the State of Illinois.

E. C. Brown and Seth B. St. John, copartners trading as Brown-St. John Company.

240 Thos. H. Brown.

George M. Brownson and J. L. Ettlinger, copartners trading as Brownson & Ettlinger.

Byers Brothers Company, a corporation organized and existing under the laws of the State of Missouri with its principal place of business at Chicago in the State of Illinois.

Wm. B. Swiney, Chas. M. Swiney and Thos. E. Swiney, copartners trading as Swiney Bros., successors to Bunker & Swiney.

J. B. Cahill, trading as J. B. Cahill & Company.

Central Live Stock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Ernest Clark and Louis Armbrecht, copartners trading as Clark, Armbrecht & Company.

E. A. Clark, trading as Clark, Bowles & Company.

John Clay, John G. Forrest, C. A. Kleman, F. H. Connor

and C. L. Robinson, copartners trading as Clay, Robinson & Company.

James R. Clegg, an individual trading as James R. Clegg & Company.

A. M. Henneberry and N. W. Cochran, copartners trading as Cochran & Henneberry.

W. P. Collings, trading as W. P. Collings & Son.

Conklin Bros. Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

H. D. Copeland & Company, a corporation organized
241 and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

J. M. Corrick.

J. F. Cross and H. G. Sommers, copartners trading as Cross, Sommers & Company.

A. B. Daniels.

P. T. Dolan and Fred Ludeman, copartners trading as Dolan & Ludeman.

J. M. Doud & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

S. S. Driver, an individual trading as S. S. Driver & Company.

Chas. R. Beason and P. E. Moore, copartners trading as Drovers Commission Company.

J. W. Eastland, an individual trading as J. W. Eastland & Company.

Guy Wheeler and T. K. Polley, copartners trading as Emmett, Wheeler & Polley.

E. H. Kuenster, surviving partner of copartnership of Erwin & Kuenster.

Evans, Snider, Buel Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Filler Wilson & McClelland, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

242 O. D. Freeland and C. M. Godfrey, copartners trading as Freeland & Godfrey.

Fred Freeman, an individual trading as Fred Freeman & Company.

P. J. Fitzgerald and G. S. Freeman, copartners trading as Freeman, Fitzgerald & Company.

Wm. Gentleman, A. M. Gentleman, C. F. Gentleman and G. J. Gentleman, copartners trading as Wm. Gentleman & Sons.

S. G. Gillogly, R. E. Gillogly, F. D. Gillogly and F. T. Gillogly, copartners trading as Gillogly & Company.

Chas. E. Harding, trading as Chas. E. Harding & Company.

Hefner Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Geo. F. Hogan, trading as Geo. F. Hogan & Company.

A. Warheimer, E. H. Ingwerson, J. H. Ingwerson, Dan R. Ingwerson, D. C. Mosier and A. C. Barroff, copartners trading as Ingwerson Bros.

Iowa Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois, with its principal place of business at Chicago in the State of Illinois.

I. W. Knettle and Edwin Knettle, copartners trading as Knettle Bros.

Knollin Sheep Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

E. H. Kuenster, an individual trading as Kuenster Livestock Commission Company.

243 A. J. Laberthe.

L. S. Larrison, an individual trading as L. S. Larrison & Company.

Lee Live Stock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

F. C. Ludeman, an individual trading as F. C. Ludeman & Company.

McCausland, Hoag & Vaughn, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Wm. Mahoney.

J. P. Maley and Harry L. Carpenter, copartners trading as Maley, Carpenter & Company.

John P. Martin, James G. Martin, George E. Martin and Wm. S. Burmister, copartners trading as Martin Bros. & Company.

Miller White & Woods, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

P. T. Dolan, trading as Miller & Dolan.

Frank R. Mullen, trading as Mullen Commission Company.

Robert S. Murray, trading as Murray & McDowell.

B. F. Hubbird, trading as Minteer Hubbird & Company.

National Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

244 Northwestern Livestock Commission, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

G. W. Nixon, C. S. Horn and W. H. Chisholm, copartners trading as Nixon, Horn & Chisholm.

North American Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Silas Palmer and W. H. Palmer, copartners trading as Silas Palmer & Son.

T. B. Vincent and C. H. Boothroyd, copartners trading as Paris Commission Company.

W. C. Patterson, trading as John Patterson & Son.

W. A. Peterson and Wm. Turnbull, copartners trading as Peterson, Turnbull & Company.

J. H. Piatt, trading as Abner Piatt & Company.

Thos. K. Polley, trading as Thos. K. Polley & Company.

R. H. Pritchard, trading as Pritchard Commission Company.

Chas. R. Rice and Oscar A. Rice, copartners trading as Rice Bros.

J. B. Roach and W. P. Roach, copartners trading as Roach Livestock Commission Company.

Rosenbaum Brothers & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

F. W. Sheldon, trading as F. W. Sheldon & Company.

W. Harry Sherwood and Russell H. Sherwood, co-
245 partners trading as Sherwood & Son.

J. Paul Shinn, Chas. H. Moberly and I. O. Fry, co-

partners trading as Shinn, Fry & Moberly, successors to Shinn Fry & Company.

James G. Shutter.

W. R. Smith, J. C. Eastes and John Smith, copartners trading as W. R. Smith & Son.

T. B. Stafford and A. B. Stafford, copartners trading as Stafford Bros.

Standard Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

A. F. Starrett Jr., O. A. Mathison, A. C. Granger and M. E. Peschong, copartners trading as Starrett, Mathison & Company.

Chas. H. Stephens, and J. A. Goble, copartners trading as Stephens & Goble.

A. F. Stewart, trading as A. F. Stewart & Company.

J. E. Strader and J. L. Strader, copartners trading as Strader Bros.

J. J. Sullivan and J. C. Sullivan, co-partners trading as Sullivan Commission Company.

A. Gilmore, C. L. Swanson and C. J. Castenholz, copartners trading as Swanson, Gilmore and Castenholz.

Harry Thompson and C. N. Ball, copartners trading as Thompson & Ball.

Thos. Tipton, E. M. Steck and W. P. Herrick, copartners trading as Tipton, Steck & Herrick.

D. L. Trout and F. L. Trout, copartners trading as Trout Livestock Commission Company.

246 G. B. Van Norman, an individual trading as G. B. Van Norman & Company.

Van Norman Lawler & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

W. H. Walter, trading as Walter Bros.

A. A. Walters, C. A. Dunbar and J. H. Dunbar, copartners trading as Walters & Dunbar.

L. B. Werden.

W. W. Wilson and Chas. A. Wilson, copartners trading as W. W. Wilson & Company.

Jet Wimp, trading as Jet Wimp & Company.

Kay Wood and Chas. A. Wood, copartners trading as Wood Bros.

Curtis A. Wood and Walter R. Wood, copartners trading as Curtis A Wood & Company.
L. B. Yancey.
W. E. Young, trading as W. E. Young & Company.

That said complaint was filed jointly by the above-named commission merchants and members of said Chicago Live Stock Exchange as representatives of said shippers of live stock numbering upwards of one hundred seventy-four thousand (174,000), and whose names were contained in Appendix A attached to said complaint for reparation filed with said Interstate Commerce Commisison; that although in said proceedings for reparation before said Interstate Commerce Commission the above-named commission merchants and members of said Chicago Live Stock Exchange acted jointly with each other, each of the above-named commission merchants and members of said Chicago Live Stock Ex-
247 change in said proceedings respectively presented and represented the claims of the particular shippers of live stock whom they had previously represented and acted for as commission merchants in the various shipments of live stock made between December 28, 1917, and February 28, 1920, and upon which said unreasonable and unlawful loading and unloading charges were made; that in each instance where said unreasonable and unlawful loading and unloading charges were made, the same were paid to said corporate carriers and railroads, or the liability to pay the same was primarily and directly assumed by said commission merchants and members of said Chicago Live Stock Exchange and in the first instance paid out of the individual funds or moneys of said commission merchants and members of said Chicago Live Stock Exchange and charged back against said individual shippers or deducted from the proceeds due to said individual shippers from said shipments, with the representation and assurance by said commission merchants and members of said Chicago Live Stock Exchange that they, in behalf of said shippers, would present to said Interstate Commerce Commission a claim for reparation for the use and benefit of said shippers; that said proceedings for reparation before said Interstate Commerce Commission were prosecuted by the above-named commission merchants and members of said Chicago Live Stock Exchange, on the theory that each of said members of said Chicago Live Stock Exchange doing business in said Union Stock Yards as commission merchants was seeking reparation in a representa-

tive capacity for the use and benefit of the particular shippers of live stock who, during said period between December 28, 1917, and February 28, 1920, had shipped live stock to such member, and which member in the first instance paid said excessive and unlawful loading and unloading
248 charges on shipments made by the particular customer shippers to such member, and primarily paid or assumed by said member and charged back to said individual customer shippers as aforesaid; that in said proceedings for reparation before said Interstate Commerce Commission said Interstate Commerce Commission proceeded on the theory and basis that each of said individual members of said Live Stock Exchange whose names are hereinabove mentioned and set forth, were seeking reparation as representatives of and for the use and benefit of the particular shippers whom they severally represented in said shipments of live stock made between December 28, 1917, and February 28, 1920, and whose identity was and is shown by the list of names of shippers set forth in Appendix A filed in said proceedings for reparation before said Interstate Commerce Commission for the purpose of making said shippers, (numbering upwards of one hundred seventy-four thousand (174,000), as aforesaid), parties to the record in said Interstate Commerce Commission proceedings; that said list of shippers so filed was duly registered and accepted by said Commission, as will more fully appear by the decisions, opinions and reports of said Interstate Commerce Commission in said reparation proceedings referred to and made a part of said petition heretofore filed in this court in the above entitled cause as aforesaid; that in said proceedings for reparation said Interstate Commerce Commission awarded reparation to each of said members of said Chicago Live Stock Exchange doing business in said Union Stock Yards as commission merchants, for the aggregate amount of the excessive loading and unloading charges primarily paid and assumed as aforesaid by each member on account of shipments made to such member by the par-
249 ticular shippers of live stock represented in said shipments by such member, as will more fully appear from the order of said Commission in said consolidated cases Nos. 9977 and 12614, said order bearing date the 12th day of December, A. D. 1927, a true and correct copy thereof being attached as Exhibit "A" to said petition filed in this court in the above entitled cause and made a part of said petition by reference and to the same extent and as fully as though the

same were therein set out; that each line or item in said Exhibit "A," under columns designated "Complainants," "Defendants" and "Amounts," are compilations made from Commission Exhibit 1-A, consisting of approximately twelve thousand (12,000) sheets filed in said Dockets Nos. 1118, 9977 and 12614 of said Interstate Commerce Commission, on which sheets there appears a detailed and precise statement of the history of each shipment on which said excessive and unlawful loading and unloading charges were made, and setting forth the number and initial of the car, the date of delivery, the number and date of the way-bill, the name of the originating station, the name of the consignor, the name of the consignee, the route, the commodity, the amount of reparation claimed, and the amount of interest at six per cent claimed on the amount of such reparation; that by comparing the various items on said sheets of said Exhibit 1-A with the items aforesaid set forth in said Exhibit "A" filed with the petition herein and made a part thereof by reference, the identity between each individual shipper mentioned and referred to in said Appendix A, consisting of upwards of one hundred seventy-four thousand (174,000) names, and the particular commission merchant and member of said Live Stock Exchange who represented said shipper in said shipments, and who in turn represented said shipper before said Interstate Commerce Commission in said claim for reparation, may be fully established;

250 That in the trial of the above entitled cause in this court there was introduced in evidence the complete records and files of said Interstate Commerce Commission in said Dockets Nos. 1118, 9977 and 12614, including said Appendix A, consisting of the names and identity of upwards of one hundred seventy-four thousand (174,000) shippers in whose behalf reparation was sought before said Interstate Commerce Commission as aforesaid, said Exhibit 1-A, consisting of approximately twelve thousand (12,000) sheets containing a detailed history of each shipment, the number and initial of the car, the date of its delivery, the number and date of the way-bill, the name of the originating station, the name of the consignor, the name of the consignee, the route, the commodity, the reparation claimed, and the interest claimed on said reparation, and the order of said Interstate Commerce Commission entered on the 12th day of December, A. D. 1927, as aforesaid, a copy of which is attached to the petition filed in the above entitled cause in this court and marked Exhibit A

and made a part of said petition; so that your petitioners represent to the court that from the record in this cause, and from the record in said Dockets Nos. 1118, 9977 and 12614 of said Interstate Commerce Commission, there is shown all of the facts hereinabove set forth, on the basis of which it can readily be determined that in said proceedings before said Interstate Commerce Commission each of the plaintiffs in the above entitled cause in this court represented and secured reparation for and on behalf of the individual shippers respectively represented by such plaintiffs during the period aforesaid.

Your petitioners further show to the court that by reason of the facts and circumstances hereinabove set forth each of your petitioners (who are identical with the plaintiffs
251 named in said petition filed in this court in the above entitled cause on the 8th day of December, A. D. 1928) by operation of law became and now are trustees of an express trust, with the duty and obligation of enforcing in this court in their respective representative capacities, for the use and benefit of the individual shippers whom they represented in said shipments and whom they represented in said proceedings for reparation before said Interstate Commerce Commission, the award of reparation made to them by said Interstate Commerce Commission as representatives of and for the use and benefit of said individual shippers.

Your petitioners further show unto the court that in the petition heretofore filed in this court in the above entitled cause on the 8th day of December, A. D. 1928, your petitioners brought this suit in their individual names as plaintiffs, on the theory that because of the fact that they in the first instance paid to said defendants the amount of said excessive and unlawful loading and unloading charges, that there was such privity between them and the defendants in said cause as would legally entitle your petitioners to institute said suit in this court to enforce said award of reparation of said Interstate Commerce Commission, but that Your Honor has held against this theory, and has heretofore, on that ground, directed the jury impanelled to try said cause, to return a verdict of not guilty against the above-named defendants; that your petitioners respectfully petition Your Honor for leave to amend their said petition filed in this court in the above entitled cause on the 8th day of December, A. D. 1928, by changing the capacity in which said plaintiffs bring this suit

to a representative capacity, whereby each of your peti-
252 tioners and plaintiffs named in the said petition filed in this court in the above entitled cause, as aforesaid, may sue to enforce said award of reparation of said Interstate Commerce Commission as representatives and trustees of the particular shippers of live stock whom they represented in the various shipments covered by said order of reparation of said Interstate Commerce Commission and whose claims for reparation were presented and prosecuted by them as aforesaid before said Interstate Commerce Commission.

Your petitioners attach hereto, as a part of this motion to amend petition, their proposed amendment, same being marked Exhibit "A".

EDWIN W. SIMS
ELWOOD G. GODMAN
FRANKLIN J. STRANSKY
CLAIR R. HILLYER
Attorneys for said plaintiffs.

State of Illinois }
County of Cook } ss.

CLAIR R. HILLYER, being first duly sworn, on oath deposes and says that he is of counsel for the plaintiffs in the above entitled cause; that he has read and carefully examined the above and foregoing motion to amend petition and is thoroughly familiar with the contents thereof; that he was attorney for said plaintiffs and for said Chicago Live Stock Exchange in all of the various proceedings before said
253 Interstate Commerce Commission subsequent to April 1, 1919; that he attended all of the hearings in said matters before said Interstate Commerce Commission subsequent to April 1, 1919; that previous to the time of the institution of said proceedings, and at the time of the pendency thereof, he had full knowledge of the relationship between said plaintiffs and the individual shippers whom they represented in said proceedings; and that the facts as hereinabove set forth in said motion to amend said petition are true as therein stated.

CLAIR R. HILLYER.

Subscribed and sworn to before me, the undersigned Notary Public in and for the County of Cook and State of Illinois, this 11th day of April, A. D. 1930.

FRANCES BECKER,
Notary Public.

(Seal)

254 * * (Caption) * *

AMENDMENT TO PETITION.

Now come the plaintiffs in the above entitled cause, by Edwin W. Sims, Elwood G. Godman, Franklin J. Stransky and Clair R. Hillyer, their attorneys, and, by leave of court first obtained, file this as their amendment to the petition in the above entitled cause filed in this court on the 8th day of December, A. D. 1928.

1. Strike from paragraph (2) of said petition, on page 2 thereof, after the word "plaintiffs" in the first line of said paragraph, the following:

"are, and each of them is, named in an order of the Interstate Commerce Commission entered on the 12th day of December, 1927, as being entitled to receive from the defendants hereinafter named the amounts respectively set forth in said order of the Commission, a copy of which is hereto attached as Exhibit 'A' and made a part hereof to the same extent and as fully as though the same were here set out:

The following named are the plaintiffs herein and are the parties entitled to receive the damages awarded by the Interstate Commerce Commission:".

255 2. At the end of said paragraph (2) of said petition, on page 9 thereof, insert the following:

That the above mentioned plaintiffs bring this suit as trustees and representatives for the use and benefit of the individual shippers whom they or their legal predecessors represented in the shipments of live stock and in the proceedings for reparation before the Interstate Commerce Commission, by virtue of the following facts, viz:

That prior to May 21, 1917, there was in effect a tariff published and filed with the Interstate Commerce Commission by the Union Stock Yard and Transit Company, one of the defendants in the above entitled cause, which provided that charges of twenty-five cents (25c) for unloading each car of live stock and fifty cents (50c) for loading each car of live stock would be assessed by said defendant, the Union Stock Yard and Transit Company, on all cars of live stock loaded or unloaded by it at the Union Stock Yards in Chicago, Illinois; that there was also in effect another tariff published and filed with the Interstate Commerce Commission, to which the following named railroads were parties, viz.: The Atchi-

son, Topeka & Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Chesapeake and Ohio Railway Company of Indiana; The Chicago and Alton Railroad Company, and William W. Wheelock and William G. Bierd, Receivers; Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway
256 Company; Chicago Junction Railway Company; Chicago, Milwaukee and St. Paul Railway Company, and H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers; The Chicago, Rock Island and Pacific Railway Company; Chicago, Terre Haute & Southeastern Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Grand Trunk Western Railway Company; Illinois Central Railroad Company; Indiana Harbor Belt Railroad Company; The Michigan Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; New York Central Railroad Company; New York, Chicago & St. Louis Railroad Company; The Pennsylvania Railroad Company; Pere Marquette Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and Harry A. Dunn, Receivers; and Wabash Railway Company, all of which railroads and systems of transportation were operated and controlled by the predecessors in office of said Andrew W. Mellon during the period of Federal control of railroads, to-wit: December 28, 1917, to March 1, 1920; that all of said railroad companies and corporations last named have and during said period of Federal control had systems of transportation and roads running through the Eastern Division of the Northern District of Illinois, with the exception of The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and Harry A. Dunn, Receivers, which railroad company is now a part of the system of the New York, Chicago & St. Louis Railroad Company, and which system has a road running through the Eastern Division of the Northern District of Illinois; that said last-mentioned tariff, to which said railroads were parties, provided that the sum of twenty-five cents (25c) for unloading each car of
257 live stock and fifty cents (50c) for loading each car of live stock would be absorbed and paid by said railroad

companies, respectively, to said Union Stock Yard and Transit Company on all cars of live stock loaded or unloaded by that company at said Union Stock Yards and shipped into said Union Stock Yards by said railroads; that said last-mentioned tariff was and is known as Agent L. A. Lowry's Tariff 20-J, I. C. C. No. 87, and supplements thereto.

That effective May 21, 1917, the defendant the Union Stock Yard and Transit Company, filed with said Interstate Commerce Commission its tariff I. C. C. No. 2, whereby it increased said charges from twenty-five cents (25c) per car for unloading to fifty cents (50c) per car for unloading, and from fifty cents (50c) per car for loading to seventy-five cents (75c) per car for loading; that no tariff was filed with said Interstate Commerce Commission by said railroads absorbing said increase in said unloading and loading charges, and therefore all shippers and receivers of live stock were, after May 21, 1917, compelled to pay and did pay to said defendant the Union Stock Yard and Transit Company and to said railroads said increase in the charge, viz.: twenty-five cents (25c) per car for unloading and twenty-five cents (25c) per car for loading, in accordance with said increase created by said tariff I. C. C. No. 2 filed as aforesaid with said Interstate Commerce Commission by said defendant Union Stock Yard and Transit Company; that effective with the taking over of said railroads under federal control on December 28, 1917, all shippers and receivers of live stock to and at said Union Stock Yards were compelled to and did pay to the respective Directors Generals of Railroads appointed by the President of the
258 United States in accordance with the law, the said increase of twenty-five cents (25c) per car for unloading and the said increase of twenty-five cents (25c) per car for loading; that during the said period from December 28, 1917, to March 1, 1920, the stock yards of the said defendant the Union Stock Yard and Transit Company were the terminals of the predecessors in office of the said defendant Andrew W. Mellon in each of the shipments of live stock hereinafter referred to and on which the sum of fifty cents (50c) per car was exacted for unloading and the sum of seventy-five cents (75c) per car was exacted for loading; that upon the filing by said Union Stock Yard and Transit Company of its said tariff Supplement No. 1 to I. C. C. No. 6, there were filed with said Interstate Commerce Commission formal protests against said tariff, whereupon said Interstate Commerce Commission from time to time thereafter suspended the operation of said

tariff and set the matter down for hearing under its Investigation and Suspension Docket No. 1118.

That on or about October 2, 1917, the Chicago Live Stock Exchange, on behalf of its members and others engaged in the buying, selling and shipping of live stock to and at the Union Stock Yards at Chicago, Illinois, filed a complaint in writing with the Interstate Commerce Commission, alleging and charging said loading and unloading charges so fixed in said tariff I. C. C. No. 2, filed with said Interstate Commerce Commission by said defendant the Union Stock Yard and Transit Company and effective May 21, 1917, as aforesaid, to be unlawful, unjust and unreasonable under the Interstate Commerce Act; that the said Interstate Commerce Commission thereupon docketed said complaint under Interstate Com-
259 merce Commission Docket No. 9977; that the said carriers hereinabove specifically named, which were made defendants in said Case No. 9977 before said Interstate Commerce Commission, are the same carriers and railroads which are named in said petition filed in this court on the 8th day of December, A. D. 1928, as aforesaid; that said corporate carriers and railroads filed their answers to said complaint in said case No. 9977 before said Interstate Commerce Commission and the issues in said case were duly made; that said case Docket No. 9977 and said case Investigation and Suspension Docket No. 1118 were thereafter, by appropriate proceedings, duly consolidated before said Interstate Commerce Commission for hearing; that thereafter a full hearing was had with reference to said cases on or about February 11, 1919, at which hearing representatives of said Chicago Live Stock Exchange and of said corporate carriers and railroads were present and participated therein; that thereafter said Interstate Commerce Commission issued its report and decision in said consolidated cases and dismissed said complaint; said report and decision being reported in 52 I. C. C. 209, attached to the petition heretofore filed in this court on the 8th day of December, A. D. 1928, and therein designated Exhibit "C" to said petition and being made a part of said petition; that on or about April 14, 1919, upon petition of the complainant in said complaint Docket No. 9977 for rehearing and application to amend its complaint by making the Director General of Railroads a party defendant, the said Interstate Commerce Commission issued an order in said Docket No. 9977 and said Investigation and Suspension Docket No. 1118, in words and figures as follows:

260 "Supplemental Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of April, A. D. 1919.

No. 9977.

Chicago Live Stock Exchange

vs.

The Atch on, Topeka & Santa Fe Railway Company, *et al.*
Investigation and Suspension Docket No. 1118.

In the Matter of the Investigation and Suspension of Live Stock Loading and Unloading Charges at Chicago, Ill.

Upon further consideration of the records in the above entitled proceedings, of petition for rehearing filed by the Chicago Live Stock Exchange and Union Stock Yard and Transit Company, and of application of the Chicago Live Stock Exchange to amend its complaint by making the Director General of Railroads a party defendant:

It Is Ordered, That these proceedings be, and they are hereby, reopened for further hearing, on the question of the amount of the loading and unloading charges for live stock at the Chicago stock yards, and the amount of such charges, if any, that should be imposed upon shippers of live stock, or should be absorbed by the defendants and whether the Chicago Stock Yards are terminals of the Chicago Junction Railway Company, and whether the tariff arrangements between the Union Stock Yard & Transit Company and the other defendants with respect to the delivery and handling of live stock at the Union Stock Yards in Chicago are in compliance with the act.

It Is Further Ordered, That the petition of the Union Stock Yard & Transit Company, so far as it seeks a reopening of the case for the purpose of reconsideration of the finding that it is a common carrier, be, and it is hereby, denied.

It Is Further Ordered, That Walker D. Hines, Director General of Railroads, be, and he is hereby made an additional party respondent herein.

It Is Further Ordered, That a copy of this order be served upon each of the parties to these proceedings.

And It Is Further Ordered, That there proceedings be, and

they are hereby assigned for further hearing on May 30,
261 1919, ten o'clock a. m., at United States Court Room,
Chicago, Illinois, before Examiner Gerry.

By the Commission:

GEORGE B. McGINTY,
(Seal) *Secretary.*"

That thereafter said consolidated case, Docket No. 9977, and said Investigation and Suspension Docket No. 1118, duly consolidated as aforesaid, were reheard by said Interstate Commerce Commission, the said Director General of Railroads being duly represented and taking an active part in said proceedings; that thereafter, on or about July 15, 1920, said Interstate Commerce Commission issued its report on further hearing reported in 58 I. C. C. 164, and found that the said unloading and loading charges were unlawful and in violation of the Interstate Commerce Act, said decision and report being attached to the said petition heretofore filed in this court in this cause and there designated Exhibit "B" and made a part of said petition by reference; that on February 25, 1921, there was duly filed with said Interstate Commerce Commission a petition or complaint for reparation on behalf of upwards of 174,000 shippers of live stock who had been damaged by the assessment and collection of said loading and unloading charges hereinabove set forth in the amount of such charges paid for them; that said complaint was given Interstate Commerce Commission Docket No. 12614; that said complaint for reparation was filed by the above-named plaintiffs, or their legal predecessors, who were members of said Chicago Live Stock Exchange between the dates of December 28, 1917, and February 28, 1920, when said excessive and unreasonable loading and unloading charges were paid.

That said petition or complaint for reparation was filed jointly by the above-named commission merchants and
262 members of said Chicago Live Stock Exchange as representatives of said shippers of live stock numbering upwards of one hundred seventy-four thousand (174,000), and whose names were contained in Appendix A attached to said complaint for reparation filed with said Interstate Commerce Commission; that although in said proceedings for reparation before said Interstate Commerce Commission the above-named commission merchants and members of said Chicago Live Stock Exchange acted jointly with each other, each of the above-named commission merchants and members of said Chi-

cago Live Stock Exchange in said proceedings respectively presented and represented the claims of the particular shippers of live stock whom they had previously represented and acted for as commission merchants in the various shipments of live stock made between December 28, 1917, and February 28, 1920, and upon which said unreasonable and unlawful loading and unloading charges were made; that in each instance where said unreasonable and unlawful loading and unloading charges were made, the same were paid to said corporate carriers and railroads, or the liability to pay the same was primarily and directly assumed by said commission merchants and members of said Chicago Live Stock Exchange and in the first instance paid out of the individual funds or moneys of said commission merchants and members of said Chicago Live Stock Exchange and charged back against said individual shippers or deducted from the proceeds due to said individual shippers from said shipments, with the representation and assurance by said commission merchants and members of said Chicago Live Stock Exchange that they, in behalf of said shippers, would present to said Interstate Commerce Commission a claim for reparation for the use and benefit of said shippers; that said proceedings for reparation be-
263 fore said Interstate Commerce Commission were prosecuted by the above-named commission merchants and members of said Chicago Live Stock Exchange, on the theory that each of said members of said Chicago Live Stock Exchange doing business in said Union Stock Yards as commission merchants was seeking reparation in a representative capacity for the use and benefit of the particular shippers of live stock who, during said period between December 28, 1917, and February 28, 1920, had shipped stock to such member, and which member in the first instance paid said excessive and unlawful loading and unloading charges on shipments made by the particular customer shippers to such member, and primarily paid or assumed by said member and charged back to said individual customer shippers as aforesaid; that in said proceedings for reparation before said Interstate Commerce Commission said Interstate Commerce Commission proceeded on the theory and basis that each of said individual members of said Live Stock Exchange whose names are hereinabove mentioned and set forth in paragraph 2 of the petition herein, were seeking reparation as representatives of and for the use and benefit of the particular shippers whom they severally represented in said shipments of live stock made between De-

cember 28, 1917, and February 28, 1920, and whose identity was and is shown by the list of names of shippers set forth in Appendix A in said proceedings for reparation before said Interstate Commerce Commission, for the purpose of making said shippers, numbering upwards of one hundred seventy-four thousand (174,000), as aforesaid, parties to the record in said Interstate Commerce Commission proceedings; that said list of shippers so filed was duly registered and accepted by said Commission, as will more fully appear by the decisions, opinions and reports of said Interstate Commerce Commission in said reparation proceedings referred to and made
264 a part of said petition heretofore filed in this court in the above entitled cause as aforesaid; that in said proceedings for reparation said Interstate Commerce Commission awarded reparation to each of said members of said Chicago Live Stock Exchange doing business in said Union Stock Yards as commission merchants, for the aggregate amount of the excessive loading and unloading charges primarily paid and assumed as aforesaid by each member on account of shipments made to such member by the particular shippers of live stock represented in said shipments by such member, as will more fully appear from the order of said Commission in said consolidated cases Nos. 9977 and 12614, said order bearing date the 12th day of December, A. D. 1927, a true and correct copy thereof being attached as Exhibit "A" to said petition filed in this court in the above entitled cause and made a part of said petition by reference and to the same extent and as fully as though the same were therein set out.

Plaintiffs represent that in the said proceedings hereinabove set forth before the said Interstate Commerce Commission they, and each of them, well knew that in the records and files in said proceedings before said Interstate Commerce Commission, as well as by verbal statements and representations made in said proceedings before said Interstate Commerce Commission by the attorneys and representatives of these plaintiffs, it was expressly stated and set forth that they were acting for and on behalf of the several individual shippers whom they respectively represented in said shipments and whom they jointly represented in said proceedings for reparation before said Interstate Commerce Commission and in the capacity of trustees of an express declared trust in favor of and for the use and benefit of the respective shippers

whom they represented in said shipments and whom they
265 represented in said proceedings for reparation before said Interstate Commerce Commission, and that they, and each of them, well knew that said individual shippers had knowledge of said proceedings before said Interstate Commerce Commission and acquiesced in the representation of their said several claims for reparation by said plaintiffs. Wherefore, plaintiffs represent that by operation of law they became and now are trustees of an express trust, with the duty and obligation of enforcing in this court, in their respective representative capacity, for the use and benefit of the individual shippers whom they severally represented in said shipments and whom they represented in said proceedings for reparation before said Interstate Commerce Commission, the award of reparation made to them, as hereinafter set forth, by said Interstate Commerce Commission, in the sum of One Hundred Forty Thousand and One Dollars and Twenty-five Cents ($140,001.25), as representatives of and for the use and benefit of said individual shippers, and in that capacity they bring this suit.

3. Strike from said petition paragraph 8, paragraph 9, paragraph 10, paragraph 12, paragraph 13, paragraph 14 and paragraph 16 thereof, found on pages 13 to 19, inclusive.

4. Strike from said petition paragraph 17, on pages 19 and 20 of said petition, and insert in lieu thereof the following:

(17) Plaintiffs further represent that in said consolidated cases Nos. 9977 and 12614, these plaintiffs, or their legal predecessors, represented before said Interstate Commerce
Commission the rights and interests of said shippers,
266 numbering upwards of one hundred seventy-four thousand (174,000), as hereinabove set forth; that said Interstate Commerce Commission in said consolidated cases Nos. 9977 and 12614, held public meetings, at which meetings evidence was heard and taken in said causes, and at which hearing said defendants were represented; that after said public hearings had been fully completed and said consolidated causes fully argued by representatives of all of said parties in interest, said Interstate Commerce Commission, on or about June 2, 1925, issued its consolidated decision and report in said causes, in which it found that the loading and unloading charges above referred to and described were unjust and unreasonable, and that reparation, with legal interest, should be made by said defendants on account of the collection by said defendants of said unjust and unreasonable

charges, which said decision and report is reported in 100 I. C. C. 266, a copy thereof being hereto attached, marked Exhibit "D", and made a part hereof as though the same were fully set forth in this petition.

SIMS GODMAN & STRANSKY,
Attorneys for Plaintiffs.

EDWIN W. SIMS,
ELWOOD G. GODMAN,
FRANKLIN J. STRANSKY,
CLAIR R. HILLYER,
Of Counsel.
Continental Illinois Bank Building,
Chicago, Illinois.

267 And afterwards, to wit, on the 18th day of April 1930, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit: Entered 1930.

268 * * (Caption) * *

Friday, April 18, 1930.

Present: Honorable Charles E. Woodward, Judge of Said Court.

This cause coming on to be heard upon the motion to vacate the orders heretofore taken and entered herein of record January 28, A. D. 1930 and after arguments of counsel said motion is taken under advisement.

269 And on, to wit, the 31st day of July, 1930 there was filed in the Clerk's office of said Court a certain Memorandum by Judge Woodward in words and figures following, to wit:

uly 31, 270 * * (Caption) * *

MEMORANDUM.

July 31, 1930.

WOODWARD, *District Judge*:

This suit was instituted by plaintiffs, 103 in number, members of the Chicago Life Stock Exchange, to recover reparations awarded by the Interstate Commerce Commission. The suit was brought in the individual names of the commission men seeking to recover reparations in their individual capacity. The money sued for, if recovered in this suit, would have been the individual moneys of the several plaintiffs. The moneys, if recovered, could have been applied to their use and benefit without any legal obligation on their part to account for and pay over any part thereof to the individual shippers. The theory on which the case was tried, in conformity with the petition, was that the several commission men were the real parties in legal interest and had the right to maintain the suit.

The case came on for trial before a jury. The evidence was voluminous. The trial consumed three or four weeks. At the conclusion of the evidence all defendants separately made motions for a directed verdict. The motions were argued by counsel on both sides at such length and were taken under advisement, by the court. The court sustained the several
271 motions for a directed verdict and in support of its position filed a lengthy opinion. In allowing the motions the court concluded in effect that the 103 commission men were without legal interest in the proceeding and were not demnified. In its opinion the court suggested that the persons who were really demnified, assuming that the order of reparations was not subject to attack, were the 174,000 shippers of live stock who had paid the alleged unreasonable charge. The court, in its opinion, gave no expression on the other points urged by the respective defendants in support of their motion for a directed verdict.

Pursuant to the direction of the court, a verdict finding the issues for the defendants, was returned. Motions for a new trial and in arrest of judgment were, respectively, overruled and judgment was entered in favor of the defendants

and against the plaintiffs for costs, from which an appeal was prayed and allowed. At the same term of court at which the judgment was entered, plaintiffs appeared and on January 31, 1930 moved to vacate and set aside the following orders in this cause, to-wit:

"Order denying and overruling plaintiffs' motion for a new trial;

Order overruling and denying plaintiffs' motion in arrest of judgment;

Judgment on the verdict in favor of defendants and against plaintiffs and against plaintiffs for costs;

Orders allowing appeal, fixing time for bill of exceptions and amount of cost bond."

The above and foregoing motion was set down for hearing and was heard, the respective parties presenting both orally and in writing elaborate arguments both for and against the allowance of such motion.

On April 11, 1930 plaintiffs appeared and moved for leave to amend their petition heretofore filed in this cause on December 8, 1929 and with the motion tendered the proposed amendment. The proposed amendment strikes out that part of the original petition in which the suit was started in 272 the individual names of the plaintiffs and substitutes therefor a suit by the present commission men as trustees of an express trust. By the proposed amendment the plaintiffs seek to recover on a cause of action in favor of the 174,000 shippers on the theory that the plaintiffs maintain a trust relation with the shippers and are seeking to recover on the ground that the shippers and not the commission men are and will be the beneficiaries of any recovery made. There is the further theory that the proposed amendment is merely formal and is intended to make the petition correspond with the proofs.

"Federal courts are very liberal in allowing amendments to prevent a miscarriage of justice."

Quaker City Cab Co. v. *Fixter,* 4 Fed. (2d) 327.

The courts prefer to try the case on its merits rather than on questions of practice. Where an amendment can be made, either before or after judgment, to make the allegation conform with the proof without changing the form of action, or doing any substantial damage to any party in interest, it should be allowed.

The court hesitated to base its holding on the ground that the plaintiffs could not maintain this suit. It was reluctant

to rest its decision on a point where it might be said that the court was taking a narrow and super-critical view of a case involving the magnitude of interests as this one does. But the point on which the decision rested was pressed with much vigor, earnestness and sincerity. It could not be evaded. It lay at the very threshhold of the inquiry. The court was of opinion that the point was well taken. As it was decisive of the controversy, the court expressed no opinion on the other matters urged with equal earnestness and sincerity.

The plaintiffs were not taken by surprise at the position assumed by the defendants. The right of the plaintiffs to maintain the suit had been repeatedly challenged before the Interstate Commece Commission. After repeated challenges before the commission as to their authority to maintain the claim
273 for reparations, the plaintiffs persistently and consistently maintained before the commission, as they did in the petition filed in this court, that they had the right to maintain the suit in their individual names and to collect and apply the amount recovered to their individual uses. Counsel for the Director General has furnished the court with a memorandum, which the court assumes to be correct, containing a transcript of statements made before the Interstate Commerc Commission relative to the theory of the plaintiffs. The memorandum so furnished reads as follows:

"THEORY OF PLAINTIFFS.

On page 27 of testimony, beginning October 3, 1922, Mr. Hillyer stated:

> 'The theory on which this is being tried is that these people are the factors and agents of these principals; that they have title to the property; that they can sell it in their names; they can sue and be sued for it in connection with it; they are liable for all of these charges legally, and that they have every right to come in here and collect this money as factors in their own right.'

On page 236 of the testimony, beginning October 3, 1922, Mr. Hillyer stated:

> 'I had better correct your impression of that right of agency, Mr. Towner, because that is not the basis of our case at all. The basis of our case is that these people have a legal right to collect this money under the decisions of the Commissions and the courts, and that it is not necessary for them to disclose here what they are going to do with it after they get it.'

Mr. Towner replied:

'Is it your theory for my information, that these complainants would have the legal right not only to recover reparation but to retain it?'

And Mr. Hillyer answered "yes".

On page 237, following the foregoing, Mr. Hillyer, in response to suggestions of the examiner that he would understand assurances that the money collected would go to the shippers were given only on moral grounds, answered

"absolutely, we are simply laying our cards on the table as to what we are going to do with it when we get the money.'

On page 563 of the testimony taken October 3, 1922, Mr. Hillyer said:

274 'It is my view that legally these shippers, commission men, entitled to collect this money and keep it if they want to, but we are volunteering the information to the Commission that they do not intend to do it and that they intend to pay it back to the people who bore the charge and that is the policy of the exchange to its customers and is the testimony of the witness Moshier, who is chairman of the Traffic Committee of the Exchange in his sworn testimony before the commission that he is going to pay it back. But that has nothing to do with the legal rights in the case.'

Following further statement by Mr. Towner, Mr. Hillyer, on page 565, said:

'Just to bring this discussion to a close I will say we stand on our complaint in this case as to what we ask for in the complaint. We are not enlarging or contracting the issues as stated in the complaint.'

On page 93 of testimony taken July 14, 1921, Mr. Hillyer stated:

'You do not have to authorize the factor. He has such right of his own.'

Mr. Hillyer further stated:

'I might say on that point that these commission merchants are interested here as factors in this reparation the same as agents for the shippers and the commission has held that the factor has a right to reparation.'

The case was not tried before the Interstate Commerce Commission on the theory of any trust relationship. The plaintiffs—commission men—have claimed since the inception of the case before the Interstate Commerce Commission and un-

til the motion for the amendment was filed after judgment in this case, that they had a right to receive the recovery in their own right and to keep it. Their claim was that it was only a moral duty, which they stated would be performed by them to account for the recovery to the 174,000 shippers. Their intentions are laudable and are to be commended, but their intentions, altruistic as they are, create no legal obligations.

As stated, the Federal courts, are liberal in the matter of amendments. If an amendment can be allowed, even after judgment, without changing the cause of action, or without doing any substantial injury to any party in interest, the court will allow the amendment to be made.

275 The plaintiffs contend that the amendment tendered in this case is merely formal and does not involve any substantial change in the issues. The defendants, on the other hand, urge with much force that the proposed amendment sets up a new cause of action. If the contentions of the defendant are correct, the motions now under consideration should not be allowed.

The court is of opinion that the proposed amendment sets up a new cause of action. It is proposed to substitute in place of the present plaintiffs, who are seeking to recover in their individual capacities, 174,000 new beneficial plaintiffs who have not hitherto appeared in the suit.

The proposed amendment is not a formal affair but introduces a new cause of action in favor of new plaintiffs. The court has read and studied the cases cited by plaintiffs in support of their proposition that the amendment should be allowed. The court, however, believes that the summary of such cases contained in the memorandum of counsel for the defendant Union Stock Yard and Transit Company is a fair and just summary and is adopted by the court as follows:

> "It will thus be observed that in all the cases on this subject, including some not cited by plaintiffs, amendments were permitted *only because the real plaintiff in the case remained the same. In every instance, any money recovered as a result of the suit would go to the same party, both before the amendment and after the amendment.* Under these circumstances the amendments permitted obviously went only to form. As we have pointed out, the situation is different here, for the reason that as the case now stands the commision men, who are named as plaintiffs, sue in their own name and on their own behalf, with no legal obligation to report to anybody. Under the proposed amendment, however, they will not be the bene-

ficiaries of any recovery, but, on the contrary, the shippers who have not appeared in this case up to now, and are now proposed to be introduced for the first time, will receive the benefit of any judgment. These circumstances make the proposed amendment one which goes to the substance of the case."

On this branch of the case the court concludes that the amendment introduces a new cause of action.

It is further to be observed that the Interstate Commerce Commission made no award in favor of the shippers. The most that can be said is that the award of the Interstate Commerce Commission was to the commission men in their
276 own names and in their own behalf or as factors and agents for the shippers. By no construction of the language of the award can it be concluded that the award was made to the commission men as trustees, either of the shippers or of anyone else. Such trusteeship does not result, as the cout pointed out in its opinion, from their position as factors. The commission brought suit in the capacity in which the award was sought and made. They now seek to bring suit in a capacity other than that in which the award was made. This they cannot do.

If the conclusion of the court is correct, that a new cause of action is sought to be introduced by the proposed amendment, then it must show that under Paragraph F, Section 16 of the Act to Regulate Commerce which reads:

"A petition for the enforcement of an order of the commission for the payment of money shall be filed in the District Court, or the state court, within one year from the date of the order, and not after,"

that the proposal to make this a suit by 174,000 shippers is barred by the statute. The statute not only bars a recovery, but destroys the right to sue.

Phillips v. *Grand Trunk Ry.* 236 U. S. 662;
Kansas City Southern Ry. Co. v. *Wolfe,* 261 U. S. 133;
Danzer v. *G. & S. I. R. R.* 268 U. S. 633.

The court feels that it could not allow these motions without doing substantial damage to the defendants. This litigation has been pending, before the Interstate Commerce Commission and in this suit, for more than twelve years. Plaintiffs have had notice of the defense on which the court based its opinion during all that time. The position of the plaintiffs was repeatedly challenged before the Interstate Commerce

Commission. In the face of such challenges the plaintiffs maintained that their position was sound. The defendants during all this time have been compelled to litigate the matter and have expended large sums of money and have devoted enormous amounts of time. To reopen the case, as proposed by the amendments, would be again to involve the expenditure of an incalculable amount of money as well as to consume much time. The plaintiffs have had their "day in court" 277 and have presented the whole record. The court, in its decision, expressed no opinion as to other issues involved. The appeal is from the judgment of the court and not from its opinion. The court may have assigned a wrong reason for the judgment. While the court, in its opinion, did not advert to the other points argued by the defendants, yet it seems to the court that on other grounds, not referred to in the opinion, the judgment of the court may be maintained. Viewed in any light the court cannot see that in justice to all parties in interest, as well as in justice to the court, the amendments should not be allowed.

Accordingly, the court denies the motions to vacate and set aside the orders heretofore entered on January 28, 1930 and denies the petition of plaintiffs to amend the original petition in this case.

ly 31, 278 And afterwards, to wit, on the 31st day of July, 1930, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

279 * * (Caption) * *

Thursday, July 31, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

It Is Ordered by the Court that the plaintiffs' motion filed January 31, 1930 to vacate and set aside certain orders and judgments entered January 28, A. D. 1930 be and the same is hereby overruled to which ruling of the Court the plaintiffs by their attorneys here and now duly except.

It Is Further Ordered that the plaintiffs' motion filed April 11, A. D. 1930 to amend the original petition filed in said cause

be and the same is hereby overruled to which ruling of the court the plaintiffs by their attorneys here and now duly except.

It Is Further Ordered that the time for filing bill of exceptions be and the same is hereby extended to October 6, A. D. 1930 and the time for filing appeal bond be and the same is hereby extended to September 22, A. D. 1930.

280 And afterwards, to wit, on the 28th day of August, 1930, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit: Entered Aug. 1930.

281 * * (Caption) * *

ORDER.

It is hereby ordered that the order entered July 31, 1930, in the above-entitled cause, be and the same is hereby amended to read as follows:

Motion of plaintiffs filed January 31, 1930 to vacate and set aside certain orders and judgments entered January 28, 1930 overruled—exception by plaintiff. Motion of plaintiffs filed April 11, 1930 to amend the original petition in this cause overruled—exception by plaintiffs. Appeal by plaintiffs prayed and allowed to the Circuit Court of Appeals for the Seventh Circuit on filing an appeal bond in the sum of Five Hundred Dollars on or before September 22, 1930. Bill of Exceptions to be filed October 6, 1930.

CHARLES E. WOODWARD.
Judge.

Dated August 28, 1930.

319 And afterwards, to wit, on the 29th day of September 1930, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

ed Sept. 29, 30.

320 * * (Caption) * *

Monday, September 29, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

On motion of plaintiffs attorneys It Is Ordered that the time within which the plaintiffs are to file Bill of Exceptions herein be and the same is hereby extended from October 6, A. D. 1930 to Octover 25, A. D. 1930.

f Excep- s filed Oct. 1930.

321 * * (Caption) * *

BILL OF EXCEPTIONS.

Filed Oct. 24, 1930, Charles M. Bates, Clerk.

322 * * (Caption) * *

Be It Remembered, That heretofore, to-wit, on the 6th day of January, A. D. 1930, being one of the regular days of the December, A. D. 1929, term of said court, this cause came on for hearing before the Honorable Charles E. Woodward, one of the Judges of said court, and a jury, upon the pleadings filed herein.

Present.

Messrs. Sims, Godman & Stransky, by Elwood G. Godman, Esq., Clair R. Hillyer, Esq., Representing the Plaintiffs.

Sidney F. Andrews, Esq., A. R. McLaughlin, Esq., Representing Andrew W. Mellon, Director General of Railroads.

Messrs. Winston, Strawn & Shaw, by Frank H. Towner, Esq., Representing Union Stock Yards & Transit Company.

323 And thereupon, to sustain the issues in their behalf, the plaintiffs offered the following evidence:

Mr. Godman: We desire, if the Court please, to offer in evidence as Plaintiffs' Exhibit 1, the opinion and decision of the Interstate Commerce Commission in Investigation and Suspension Docket No. 1118 and No. 9977, *Chicago Live Stock Exchange* v. *Atchison, Topeka and Santa Fe Railway, et al.*

The Court: Yes, it is admitted.

Whereupon said document marked Plaintiffs' Exhibit 1 was received in evidence, and is in the words and figures following, to-wit:

324 PLAINTIFFS' EXHIBIT 1. Plaintiffs hibit 1

ADP

5594

INTERSTATE COMMERCE COMMISSION.

Investigation and Suspension Docket No. 1118.

Live Stock Loading and Unloading Charges.

No. 9977.

Chicago Live Stock Exchange

vs.

Atchison, Topeka & Santa Fe Railway Company *et al.*

Submitted October 9, 1918. Decided February 11, 1919.

Upon the facts of record, Held, That—

1. The Union Stock Yard & Transit Company of Chicago is a common carrier engaged in interstate commerce and subject to the provisions of the act to regulate commerce.

2. The notice of cancellation of its tariff of charges for

loading and unloading live stock, in carloads, at the Chicago stockyards has not been justified.

3. The loading and unloading of live stock, in carloads, at the Chicago stockyards is a duty of the shipper.

4. The loading and unloading of live stock, in carloads, at the Chicago stockyards may be assumed by the carriers in those instances in which their convenience is aided and their equipment conserved by so doing.

5. The loading and unloading service performed by the Union Stock Yard & Transit Company is for the benefit of the shipper, but tends also to the convenience of the line-haul carriers.

6. In the absence of a showing of undue prejudice how much, if any, of the loading and unloading charges at the Chicago stockyards may properly be absorbed by the line-haul carriers is dependent upon the degree to which their interests are served in any particular instance.

7. The failure to absorb all of the charges for loading and unloading live stock at the Chicago stockyards, while absorbing all such charges at certain other markets, has not been shown on this record to produce undue prejudice against shippers of live stock at the Chicago stockyards.

8. The Chicago stockyards are the terminals for receipt and delivery of live stock of the railroad utilizing them.

Harry C. Barnes and Sims, Welch & Godman for complainant.

S. H. Cowan for National Live Stock Shippers Protective League and American National Live Stock Association; Clifford Thorne for National Live Stock Shippers League and Cornbelt Meat Shippers Association; R. D. Rynder for Swift & Company; and Ralph M. Shaw and George M. Kelly for Union Stock Yard & Transit Company of Chicago.

T. J. Norton, D. P. Connell, William W. Colin, jr., Kenneth F. Burgess, J. N. Davis, J. G. Love, W. E. Bush, W. N. King, W. F. Dickinson, F. A. Adams, Robert H. Widdicombe, and A. P. Humburg for defendants.

Report of the Commission.

By the consent of all parties, the above-named cases, which are related, have been consolidated and will be disposed of in one report.

By tariff, filed to become effective on May 21, 1917, the

Union Stock Yard & Transit Company of Chicago, hereinafter called the stockyard company, increased its charge for unloading and loading cars of live stock at the stockyards of Chicago from 25 and 50 cents per car to 50 and 75 cents per car, respectively. The various railroads that deliver and accept shipments of live stock at the stockyards had for many years either borne or absorbed the entire charges of the stockyard company for this service, and when these charges were increased an attempt was made by the stockyard company to collect the increased charges from the line haul carriers. This increased charge the carriers refused to pay, with the result that the carriers increased their freight bills by the amount of the increased charges, and the stockyard company collected and retained such charges from the shippers. Effective September 1, 1917, the stockyard company filed with the Commission a cancellation notice, as follows:

Effective September 1, 1917, U. S. Y. & T. Co., tariff No. 3, I. C. C. No. 6, will be withdrawn and canceled. The loading and unloading platforms of the Union Stock Yard & Transit Company of Chicago will in future be used or available for use by the railways entering Chicago and using them as terminal stations, under operating arrangements.

Certain shippers of live stock at the Chicago stockyards protested against the proposed cancellation, and the cancellation notice was suspended by appropriate orders until June 30, 1918.

The salient facts in the history of the stockyard company are as follows:

Prior to 1865 there were four different points in the city of Chicago at which live stock was delivered and marketed. In that year the railroads then entering Chicago organized a company to be known as the Union Stock Yard & Transit Company. The stock in this company was very largely taken by the Chicago railroads. The company was created by a special act of the legislature of the state of Illinois, approved February 13, 1865. The company was entitled to engage in many activities. Chief among the rights secured were:

325 (a) The right to construct the necessary buildings, railway tracks, and loading and unloading platforms for the accommodation of the business of a general union stockyard for cattle and other live stock.

(b) The right to construct, maintain, and operate a rail-

way from the grounds that might be selected for its yards so as to connect with the tracks of all the railroads which terminated at Chicago.

Accordingly the stockyards were constructed and the railway was built. The stockyard company performed the loading and unloading of cars of live stock from the beginning of its operation. The loading charge of 50 cents and the unloading charge of 25 cents per car was established by the board of directors of the stockyard company on April 18, 1867. Up to January 1, 1919, these charges were either borne or absorbed by the respective railroads that performed the line haul. Carriers hauling live stock to Chicago moved the cars with their own power and crews over the tracks of the stockyard company to the unloading platform. No charge was apparently made against the line haul carriers for the use of the tracks for the transportation of these cars to the unloading platforms until 1894. Prior to that year the various railroads which had owned shares in the stockyard company disposed of their holdings. In 1894 a charge was made against the railways using these tracks which was assessed on a per car basis and varied to some extent with the length of the haul.

In 1897, the stockyard company leased all of its railroad property for a period of 50 years to an Illinois corporation, known as the Chicago & Indiana State Line Company, now known as the Chicago Junction Railway Company. The lease covered all its railways and tracks, the stock yard company retaining for itself the loading and unloading platforms and yards. Under this lease the stockyard company received two-thirds of the profits derived by the lessee from the operation of the railroad. There was also organized at a date not stated in the record a holding company, which appears to have been called an investment company, known as the Chicago Junction Railway & Union Stock Yards Company of New Jersey, which owned a majority of the stock of the stockyard company and the Chicago Junction Railway.

Subsequent to the assessment of the trackage charge for the use of the tracks leading from the trunk lines to the stockyards, the railroads continued to receive and deliver shipments of live stock, in carloads, at the stockyards and transport them with their own locomotives and crews over the tracks of the Chicago Junction Railway. They, however, soon published a tariff containing a switching charge of $2 per car for the service of switching cars between the stock-

yards and points on their own lines. This increased the total rates from points of origin to the stockyards by $2 per acre. Complaint arose regarding the amount of the switching charge and was dealt with by us in *Cattle Raisers Asso.* v. *F. W. & D. C. R. R. Co.*, 7 I. C. C., 13; *Cattle Raisers Asso.* v. *C., B. & Q. R. R. Co.*, 11 I. C. C., 277 and 12 I. C. C., 507. The switching charge was held by us to be unreasonable, but this conclusion was not sustained by the courts to which appeal was taken.

In 1911, an action was brought in the Commerce Court to compel the stockyard company and the Chicago Junction Railway to file with the Interstate Commerce Commission tariffs in conformity with section 6 and reports and statements in conformity with section 20 of the act to regulate commerce. The Commerce Court there held, 192 Fed., 330, that the Chicago Junction Railway was a common carrier engaged in interstate commerce and subject to the provisions of sections 6 and 20 of the act to regulate commerce. The court also held that the owner of a railroad, which is leased and operated by a lessee as a common carrier engaged in interstate commerce, may be required to make annual reports to the Interstate Commerce Commission; that a stockyard company which receives live stock from carriers at its yards, pens, feeds and cares for the same, and maintains a public market for its sale, and which unloads and reloads it when required, receiving fixed prices for its services is not a common carrier within the meaning of the act to regulate commerce; that the term "common carrier" as used in the act is to be given its ordinary meaning of one engaged in the actual work of transportation; and a corporation not so engaged is not within the act merely because it is authorized by its charter to engage in such business. It is also stated that:

A stockyards company, authorized by its charter to build and operate a railroad and which did build and operate one in interstate commerce, on leasing its line and equipment for a term of years to an independent operating company, ceased to be a "common carrier" engaged in interstate commerce within the meaning of the interstate commerce act, * * * and is not subject to the provisions of the act as such, because it receives as rental a share of the net earning of its road; nor because the owner of a majority of the stock also owns a majority of the stock of the lessee. * * * A holding company is not a common carrier within the meaning of the

interstate commerce act because of the fact that it owns all of the stock of a corporation which is such a common carrier.

An appeal was taken to the Supreme Court of the United States. In the opinion of the Supreme Court, 226 U. S., 286, the Commerce Court was upheld in its conclusion that the Chicago Junction Railway was a common carrier and subject to the provisions of sections 6 and 20 of the act to regulate commerce, but the conclusion of the Commerce Court relative to the stockyard company was reversed. In reference to these two companies the Supreme Court stated on page 306:

> We think that these companies, because of the character of the service rendered by them, their joint operation, division of profits, and their common ownership by a holding company, are to be deemed a railroad within the terms of the act to regulate commerce, and the services which they perform are included in the definition of transportation as defined in that act. It is the manifest purpose of the act to include interstate railroad carriers, and by its terms the act excludes transportation wholly within a state. In view of its purpose and so construing the act as to give it force and effect, we think the stock yard company did not exempt itself from the operation of the law by leasing its railroad and equipment to the junction company, for it still receives two-thirds of the profits of that company and both companies are under a common stock ownership with its consequent control. We therefore think the Commerce Court was right in holding that the junction company should file its rates with the Interstate Commerce Commission and that it should also have held the stock yard company subject to the provisions of the interstate commerce acts.

326

On pages 304 and 305 of the decision, the court stated:

> The fact that the performance of the service is distributed among different corporations having common ownership in a holding company which controls an interstate system was held in *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission, supra* [219 U. S., 498], to make no difference, where the service to be performed was a part of the carriage of freight by railroad in interstate commerce commission. Nor does it make any difference that neither the junction company nor the stockyard company issues through bills of lading. It is the character of the service rendered, not the manner in which the goods are billed, which determines the interstate character of the service. *Southern Pacific Terminal*

Co. v. *Interstate Commerce Commission, supra; Ohio R. R. Comm.* v. *Worthington,* 225 U. S. 101.

Together, these companies, as to freight which is being carried in interstate commerce, engage in transportation within the meaning of the act and perform services as a railroad when they take the freight delivered at the stock yards, load it upon cars, and transport it for a substantial distance upon its journey in interstate commerce, under a through rate and bill furnished by the trunk line carrier, or receive it while it is still in progress in interstate commerce upon a through rate which includes the terminal service rendered by the two companies, and complete its delivery to the consignee. They are common carriers because they are made such by the terms of their charter; hold themselves out as such and constantly act in that capacity, and because they are so treated by the great railroad systems which use them.

Subsequent to the decision of the Supreme Court the stockyard company filed a tariff with the Interstate Commerce Commission showing its charges for loading and unloading live stock. In 1913, it canceled its lease to the Chicago Junction Railway and entered into a lease by the terms of which it receives $600,000 per year for the use of its tracks in lieu of a two-thirds share in the net profits of operation theretofore received.

The services it renders in connection with shipments of live stock to and from the stockyards are reported to be as follows:

(a) The service of guaranteeing the railroad companies against loss arising out of the delivery of live stock without the surrendering of the bill of lading.

(b) The service of guaranteeing freight charges.

(c) The service of loading and unloading the freight.

(d) The service of notifying the consignees.

(e) The service of correctly tabulating the car numbers and contents of the car.

(f) The service of furnishing the weights to the carriers.

(g) The service of maintaining records as to dead and crippled animals and of maintaining records showing deliveries to "billed consignees."

(h) The service of furnishing the railroad companies terminal facilities for the receipt and delivery of live stock at Chicago.

The stockyard company contends that although it was held by the Supreme Court to be a common carrier as to some of

its activities it is not altogether certain that the court referred to the particular activities above described in connection with shipments of live stock. It is also contended that the relationship between the stockyard company and the Chicago Junction Railway has changed to some extent since the decision of the Supreme Court. The language of the court's description of the activities of the stockyard company is as follows:

After leasing its railroad property to the junction company, the stockyard company continued to operate its stockyard facilities for loading and unloading cattle and other live stock bound for and coming from points outside the state, and to feed and water live stock in transit over the lines of trunk-line carriers, and also to feed, bed, and water live stock shipped to consignees doing business in the stockyards district.

The employees of trunk lines bringing live stock to the stockyards turn over the waybills accompanying such shipments, with what are called "live-stock stubs" attached, to the employees of the stockyard company, who use the waybills in unloading and counting the stock, and the waybills and stubs are then sent to the auditor of the stockyard company (being also the auditor of the junction company) who retains the stubs and forwards the waybills to the local agents of the trunk lines. The stockyard company advances the charges on such shipments to the trunk lines and collects from the consignees, usually commission men, doing business at the stockyards, the moneys it has so advanced for their accommodation.

It is clear, therefore, that in holding the stockyard company a common carrier the court certainly had in mind the particular activities of that company with reference to shipments of live stock. The only difference as to the relationship then and now existing between the two companies is that then the Chicago Junction Railway held a 50-year lease with approximately 35 years to run and paid two-thirds of its profits to the stockyard company as rental, where as it now has a lease in perpetuity and pays $600,000 per year as rental. The character of service rendered has not changed. The complementary relation of the stockyard company to the Chicago Junction Railway Company is now as it was in 1912. The stock of both companies is owned by a holding company with control of both organizations, and it is of no more real conse-

quence to the actual owner of these companies which one
327 makes a profit than it is to a man in which pocket he carries his money. The relation of these two companies to each other and to the holding company controlling both and the respective services performed by each in connection with shipments of live stock can not now be held to be essentially different from the conditions existing in 1912. The inevitable conclusion is that the stockyard company is now, as to shipments of live stock to and from the stockyards, a common carrier engaged in interstate commerce and subject to the provisions of the interstate commerce act. Its tariff of charges relating to services performed in connection with shipments of live stock should be filed with this Commission. The notice of cancellation of its tariff of charges for loading and unloading live stock in carloads, at the Chicago stockyards has not been justified.

The Chicago Live Stock Exchange, the complainant in docket No. 9977, is made up of commission merchants and others engaged in the business of buying, selling, and shipping live stock at the Chicago stockyards. The stockyard company, the Chicago Junction Railway Company, and 27 other railways are made defendants.

The complaint asserts that it is unduly discriminative on the part of various carriers reaching other markets to absorb the entire loading and unloading charges at such markets and to refuse to absorb such charges in full at the Chicago stockyards; that it is as much the duty of the carrier to load and unload live stock as it is to haul it; that the method of compensating the stockyard company for its service in loading and unloading cars of live stock is a matter to be adjusted between that company and the trunk line carriers and that it should be made the basis of an operating agreement between the stockyard company and interested carriers and not the subject matter of published tariff arrangements which involve the shipping public. The complainant urges that if the stockyard company is not permitted to cancel its tariff, the line haul carriers should be required to publish appropriate amendments to their tariffs showing absorptions of the increased loading and unloading charges; that if the stockyard company is permitted to cancel its tariff, then the line haul carriers should be ordered to amend all their tariffs containing rates on live stock to and from the Chicago stock yards in such manner as to authorize the loading and unloading of cars at these yards without expense to the shipper. Reparation is

sought against the defendants on all shipments of live stock, in carloads, made by complainants to or from the Chicago stock yards since May 21, 1917, amounting to 25 cents per car, or such other sum as, in view of the evidence to be adduced, we might consider due.

An intervening petition was filed on behalf of Swift & Company and certain other corporations, and the National Live Stock Shippers' Protective League. The interveners asked for reparation of 25 cents per car on shipments loaded and unloaded for them at Chicago since the taking effect, on May 21, 1917, of the tariff filed by the stockyard company increasing by 25 cents per car the loading and unloading charges at the yards.

As stated, the complaint makes the broad assertion that it is the duty of the carriers transporting shipments of live stock, in carloads, to load and unload such shipments. In *National Lumber Dealers' Asso.* v. *A. C. L. R. R. Co.*, 14 I. C. C., 154, we had occasion to deal with the general practice obtaining throughout the country as to loading and unloading shipments of freight in carloads. At page 160 of this report we stated:

Ever since the inception of railroad transportation shippers have, generally speaking, loaded and their consignees have unloaded carload freight. This practice or custom arose naturally because it was the easiest, most economical, and satisfactory way of doing business. It is practically out of the question for railroads to provide men to load and unload carload freight at all points in the country. The shipper can load more satisfactorily and economically than anyone else. He is about to possess himself of effective appliances, where they can be used, to employ skilled men to properly load all carload traffic, whether shipped in closed or on open cars. For the same reasons consignees are the best fitted to unload shipments. For more than fifty years the loading by consignor and unloading by consignee has been a recognized rule of carload transportation, and this rule extends to and includes commodities which yield to carriers the largest part of their income.

While, as stated, the rule that shippers must load and unload carload freight is generally applied, there are exceptional instances in which this work is done by the carriers. An example is shown in *Davies* v. *L. & N. R. R. Co.*, 18 I. C. C. 540. In that case the complainant contended that it was the duty

of the carriers to load carload shipments of fruit and vegetables at their own expense. We there found, as stated in the syllabus:

Complainant's contention that it is the duty of defendants to load, strip, and brace carload shipments of fruit and vegetables at their own expense, for the reason that this service is included in the carload rate is not tenable, because the tariffs of the principal defendant provide that shippers shall load and unload carload shipments. The service of loading, furnishing material, and placing in the cars is an additional service over and above the transportation for which the carriers are entitled to receive reasonable compensation.

The soundness of the view that ordinarily it is the duty of the shipper to load and unload carload freight can not be questioned. What is there, then, respecting shipments of live stock in carloads that differentiates such shipments from that of other articles so clearly as to shift the responsibility and duty of loading and unloading from the shipper to the carrier?

Section 1 of the act to regulate commerce provides:

328 That the term "transportation" shall include all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

There is here, however, no attempt to particularize as between one variety of freight and another and to provide for a greater degree of responsibility or an added duty with respect to carload shipments of live stock than exists as to other freight. Section 1 further provides:

It is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe, and enforce * * * just and reasonable regulations and practices affecting * * * all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this act upon just and reasonable terms.

In this portion of the section there is nothing stated which in any manner sets apart shipments of live stock from shipments of other freight unless it be that it is impracticable to secure their handling and delivery safely and promptly unless the carriers do the loading and unloading. The complainant relies largely upon an expression used by the Supreme Court in *Covington Stock Yards Co.* v. *Keith*, 139 U. S.,

128, and in *United States* v. *Union Stock Yards,* 226 U. S., 286. It was there stated:

The transportation of live stock begins with their delivery to the carrier to be loaded upon its cars and ends only after the stock has been unloaded and delivered, or offered to be delivered, to the consignee, if to be found at such place as admits of their being safely taken into possession.

In *Doyle* v. *Continental,* 94 U. S., 535, the same court stated:

The opinion of a court must always be read in connection with the facts upon which it is based.

In the Covington Case there was no issue as to the carrier's duty to load and unload cars of live stock. The carriers long before had assumed the duty of loading and unloading live stock at the Covington stock yards. The carriers there involved held themselves out to perform the loading and unloading service and the record does not show whether this was brought about by competitive conditions or whether the service was compensated for in the line-haul rate. The court further stated in the same opinion:

A railroad company, it is true, is not a carrier of live stock with all the responsibilities that attend it as a carrier of goods. *North Penn* v. *Commercial Bank,* 123 U. S., 727, 734. There are recognized limitations upon the duty and responsibility of carriers of inanimate property that do not apply to carriers of live stock. These limitations arose from the nature of the particular property transported. But, notwithstanding this difference in duties and responsibilities, a railroad company, when it undertakes generally to carry such freight, becomes subject, under similar conditions, to the same obligations, so far as the delivery of the animals which are safely transported are concerned, as in the case of goods.

In other words, the railroad company becomes subject to the same obligations in respect to the delivery of live stock as in the case of goods. If it holds itself out to deliver for one person, it must deliver for all persons. It was testified in this case that in the calendar year 1917, 87.6 per cent of the stock originating on the Santa Fe system originated at points where the shippers did the loading. The Chicago & North Western Railway handled 68,000 cars of live stock to Chicago in 1917 and over 90 per cent originated at points where the shippers did the loading. The practice on these roads is said to be representative of the practices on other western roads.

Primary Markets.

The principal live stock markets are Chicago, Peoria, and East St. Louis, Ill., Omaha and Nebraska City, Nebr.; Sioux City, Iowa; Kansas City, St. Joseph, and St. Louis, Mo.; Atchison and Wichita, Kans.; Oklahoma City, Okla.; Amarillo, Fort Worth, and El Paso, Tex.; Pueblo and Denver, Colo.; St. Paul, Minn.; Milwaukee, Wis.; Detroit, Mich.; Louisville, Ky.; Cincinnati, Ohio; Indianapolis, Ind.; Pittsburgh and Philadelphia, Pa.; Jersey City, N. J.; and East Buffalo and New York, N. Y. At these points it is the practice for the carriers to absorb, at least in part, loading and unloading charges. The receipts of live stock at the Chicago stockyards for the year 1917 were 255,093 cars. The receipts during the month of January of that year were 29,329 cars. The amount of stock received daily is so large and the necessity for its prompt unloading is so imperative that it is probably impracticable for the actual consignees themselves to do the unloading. A force of men is maintained at the stockyards for that purpose, and it is testified that ordinarily a trainload of live stock will be unloaded at the rate of approximately one minute per car. There is inevitably considerable difference between the situation existing at country points, where the loading and unloading is performed by the shippers, and the situation at a great market like that afforded by the Chicago stockyards, where the receipts will often be as much as a thousand cars per day. Ordinarily train crews are not composed of stockmen, and it can not well be argued that there is any more obligation upon a railroad company to furnish train crews particularly skilled in the handling of live stock than there is to furnish crews particularly skilled in the handling of lumber, grain, or any other commodity. While it is true that the train crews at country stations do sometimes assist with the loading and unloading, their principal duties
329 are in connection with the proper and convenient placing of cars. The volume of receipts or shipments at country points is often so small that the maintenance by the railroad of an organization at such places for the purpose of loading and unloading cars is out of the question. At the Chicago stockyards the receipts and shipments are so large as to make necessary the maintenance of an organization to perform this service. This organization serves both the shippers and the carriers. The consignee finds his stock promptly unloaded and cared for, whether he is on hand at the moment of

its arrival or not. The carriers secure the prompt release of their equipment and its return to the service.

Are the Chicago Stock Yards the Live-Stock Terminals of the Line Haul Carriers?

Some testimony was offered as to the facilities of some of the carriers for receipt and delivery of live stock at points on their own rails within the city of Chicago. This has nothing to do with the question here in issue. There is no charge in the complaint that these facilities are not adequate for the receipt and delivery of all live stock which the shippers may desire to load at or consign to such points. A very large proportion, said to be as high as 98 per cent of the stock shipped to Chicago, is consigned to persons at the stock yards. None of the line haul carriers reaches the Chicago stock yards with its own rails, but all utilize the tracks of the Chicago Junction Railway, for which they pay a trackage charge as published in the tariff of the latter company.

In *Interstate Commerce Commission* v. *C., B. & Q. R. R. Co.*, 186 U. S., 320, the Supreme Court, in speaking of the right to divide the total rate to the stock yards into two parts consisting of a line haul charge and a switching charge, said:

We see no reason to doubt, under the facts of this case, the correctness of the rule as to the right to divide the rate, admitted by the Commission and announced by the court below. * * * Whether the rule which we approve as applied to the facts in this case will be applicable to terminal services by a carrier on his own line, which he was obliged to perform as a necessary incident of his contract to carry, and the performance of which was demanded of him by the shipper, is a question which does not arise on this record and as to which we are, therefore, called upon to express no opinion.

By this, it appears that the court did not consider the terminal service at the stockyards as a necessary incident to the contract to carry assumed by the line haul carriers; that in delivering at the stockyards they undertook a further and additional service—a delivery to a terminal not on their lines—and were entitled to additional compensation for so doing. These stockyards, however, are in fact a terminal for the receipt and delivery of live stock; that is one of the purposes for which they were created and one of the uses to which they are now put. The situation appears to be exactly the same as it

would be were the stockyards outside the city limits of Chicago. The stockyards must be the terminal for the receipt and delivery of live stock of the railroad utilizing them.

The complainant disclaims any attempt to prove that the increased loading and unloading charges are unreasonable in and of themselves. The claim is that, whether these charges are more or less than they reasonably should be, it is a service performed for the line-haul carriers, and must be paid for by them. The complainant does assert that the absorption of the entire loading and unloading charges by the line-haul carriers at other live-stock markets and the failure to absorb the entire charges at Chicago is unduly preferential of other markets and unduly prejudicial to the Chicago market.

A statement was filed in the record showing the charges accruing on four cars of cattle shipped to the Chicago stockyards from Plattsmouth, Mo. These charges were as follows:

Freight, including war tax and unabsorbed unloading charges	$245.28
Fire insurance	.40
Yardage	26.00
Feed	10.50
Live Stock Protective League	.20
Commission	60.00
Total	343.38
Sale price of stock	10,432.92
Net proceeds	10,089.54

The unabsorbed unloading charges on these four cars amounted to $1. The unloading charges that were absorbed were also $1. The line-haul carriers have always held themselves out to absorb 25 cents per car for unloading and 50 cents per car for loading at these yards. These carriers have not held themselves out in terms to absorb the entire charge for loading and unloading at Chicago. The additional charge of 25 cents per car which the shippers have been called upon to pay since May 21, 1917, is altogether too insignificant in quantity to affect the movement of stock to or from that market as compared with other markets. It seems altogether unlikely that its nonabsorption or absorption by the carriers has had or will have the effect of turning away or bringing to that market a single carload of stock.

The carriers ask the Commission to find that the absorption

of any part of the loading and unloading charges at Chi-
330 cago or other markets is unduly preferential of those markets and unduly prejudicial to the various points at which such charges are not absorbed. The organization at the stockyards that handles this stock fulfills a very necessary and useful purpose, serving the interests of both carriers and shippers, and can very well exact a fair and reasonable price for the service performed. The situation at this point, as well as at other markets, must rest upon its own bottom. In so far as the convenience of the railroads is aided and their equipment conserved by an organization at this market that loads and unloads the livestock, we can see nothing unlawful in the absorption of such part of these charges as will fairly represent the measure of the service renderd to the railroads.

The determination at each point where such an organization exists of the amount of the loading or unloading charges that the line-haul carriers may properly absorb in consideration of the service rendered to them rests, in the first instance, with the carriers serving such point. The record is not sufficient to enable us to reach a judgment as to what portion of the loading and unloading charges at the Chicago Stock Yards should be absorbed by the line-haul carriers.

The theory upon which the complainant, the stockyard company and the interveners have proceeded, is that the line-haul carriers created the situation existing at Chicago by the organization of the Union Stock Yards & Transit Company, and the absorption through many years of its loading and unloading charges; that the stockyard company is an agent of the line-haul carriers; that the facilities of that company are absolutely essential to a complete delivery at this great market; that these facilities are private property, not subject to public control, although used in performing a common carrier service; that whatever price the company may see fit to exact for the service rendered and the facilities used it must be paid by the line-haul carriers. They disregard the facts that the stockyard company is made a common carrier by the terms of its charter; that it has been held to be such by the Supreme Court of the United States; that its facilities for loading and unloading live stock are not on the rails of the line-haul carriers; and that these facilities are reached by the rails of the Chicago Junction Railway.

McChord, Commissioner:

Except as to certain unimportant changes the foregoing is the report prepared by the examiner and served upon the parties. Exceptions were filed thereto by certain of the parties.

Those filed by the Chicago, Milwaukee & St. Paul Railway Company and the Atchison, Topeka & Santa Fe Railway Company have been considered, and we find them not well taken. The exceptions filed by the stockyard company, the complainant, and the National Live Stock Shippers' Protective League will now be considered.

Certain questions of fact are raised in the exceptions, but upon examination of the record we find that the facts as stated are correct.

An exception is taken to the conclusion reached by the examiner that as to shipments of live stock the stockyard company is a common carrier and should file tariffs. It is contended that this question is not in issue. With this we can not agree. In order to dispose of the matters involved in this proceeding it is first necessary to determine the status of the stockyard company. If held to be a common carrier the provisions of the act so far as they are applicable must be complied with.

From the facts of record it is clear that the stockyard company is a common carrier within the meaning of section 1 of the act. It is performing services in connection with the receipt and delivery of interstate shipments. As above stated, the stockyard company was held to be a common carrier by the Supreme Court, and there has been practically no change in its status since that decision was rendered.

It is contended that the loading and unloading services are performed by the stockyard company as the carriers' agent, and that its charges therefor need not be filed under section 6 of the act whether or not it is a common carrier in respect to such service.

Section 6 of the act provides that common carriers shall file with the Commission schedules showing all charges for transportation, and that such schedules shall state separately all terminal charges and other charges which the Commission may require. Section 6 also provides that no carrier, unless otherwise provided, shall engage or participate in the transportation of property unless the charges upon which the same is transported have been filed and published in accordance with the provisions of the act.

Rule 10(c) of Tariff Circular 18-A provides that a terminal road must publish tariffs containing all its charges whether any part or all of such charges are absorbed by connecting carriers; and rule 10(e) provides that if part or all of the charges of a terminal carrier are to be absorbed by a con-

necting road, the tariff of such connecting road must specify that its rate includes originating or delivery services by the terminal road, and that it will absorb the charges of such terminal road in a specified sum, or as per the current tariffs on file with the Commission.

An exception is also taken to the examiner's conclusion that the stockyards are the terminals of the Chicago Junction Railway Company. In *Boardman & Co.* v. *S. P. Co.*, 37 I. C. C., 81, the Commission stated that in the absence of tariff provisions to the contrary the line-haul rate of a particular carrier includes the receipt or delivery of carload freight only at industries or other points located upon its own rails. In this case there are no tariff provisions requiring the line-haul carriers to make deliveries off their rails.

It is contended that when a carrier acquires, either by lease or under trackage arrangements, the right to use the rails of another carrier in its through business, the rails of the lessor, as between the shipper and the lessee, become the rails of the lessee and part of its system. The Chicago Junction Railway is a party to the tariffs of the line-haul carriers containing the rates to and from the stockyards, or the additional charges for the movement from the rails of the line-haul carriers to the stockyards are published in a tariff to which the Chicago Junction Railway is a participating carrier, so that the rates applied are either joint or combination rates to which the Chicago Junction Railway is a party.

An exception is also made to the conclusion that the loading and unloading of live stock is a duty of the shipper. It is contended that the service is for the carriers' benefit and not that of the shippers. It is clear that the line-haul carriers are under no obligation to load or unload live stock for shippers, and if they do so they are entitled to compensation therefor. In the absence of tariff provisions to the contrary this is a separate and distinct service not included in the transportation rate. We have held that for loading and unloading, and for all other special services apart from conveyance, the carriers may properly make a reasonable charge since they are not accessorial parts of the transportation which section 1 requires the carriers to furnish. *Dunnage Allowances,* 30 I. C. C., 538, 543.

Upon the facts of record we find that—

1. The Union Stock Yard & Transit Company of Chicago is a common carrier engaged in interstate commerce and subject to the provisions of the act to regulate commerce.

2. The notice of cancellation of its tariff of charges for loading and unloading live stock, in carloads, at the Chicago stockyards has not been justified.

3. The loading and unloading of live stock, in carloads, at the Chicago stockyards is a duty of the shipper.

4. The loading and unloading of live stock, in carloads, at the Chicago stockyards may be assumed by the carriers in those instances in which their convenience is aided and their equipment conserved by so doing.

5. The loading and unloading service performed by the Union Stock Yard & Transit Company is for the benefit of the shipper but tends also to the convenience of the line-haul carriers.

6. In the absence of a showing of undue prejudice, how much, if any, of the loading and unloading charges at the Chicago stockyards may properly be absorbed by the line-haul carriers is dependent upon the degree to which their interests are served in any particular instance.

7. The failure to absorb all of the charges for loading and unloading live stock at the Chicago stockyards, while absorbing all such charges at certain other markets, has not been shown on this record to produce undue prejudice against shippers of live stock at the Chicago stockyards.

8. The Chicago stockyards are the terminals for the receipt and delivery of live stock of the railroad utilizing them.

On December 28, 1917, the federal government assumed control generally of the transportation systems of the country, including those of the defendants in No. 9977. The stockyard company has not been taken over by the federal government. The Director General of Railroads has not been made a party defendant. No change due to the operation of the defendants' lines as a unit has been brought to our attention.

Our order suspended the cancellation notice until June 30, 1918, and the effective date thereof was voluntarily postponed by the stockyard company until January 1, 1919. No further postponement was made, so that there are no charges now on file covering the loading and unloading services. Section 6 of the act provides that no carrier, unless otherwise provided, shall engage or participate in the transportation of property unless the rates and charges upon which the same is transported have been filed and published in acordance with the provisions of the act. Therefore, if the circumstances and conditions surrounding the transportation since that date are similar to those in effect at the time the evidence was sub-

mitted, it would seem that the above requirement of the act has not been met. If such is the fact, prompt action should be taken by the stockyard company to remedy this situation.

An order will be entered dismissing the complaint, and the proceeding of investigation will be discontinued.

332 ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 11th day of February, A. D. 1919.

Investigation and Suspension Docket No. 1118.

Live Stock Loading and Unloading Charges.

No. 9977.

Chicago Live Stock Exchange

vs.

The Atchison, Topeka & Santa Fe Railway Company *et al.*

These cases being at issue, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It Is Ordered, That the complaint in No. 9977 be, and it is hereby, dismissed, and that the proceeding of investigation in Investigation and Suspension Docket No. 1118 be, and it is hereby, discontinued.

By the Commission.

GEORGE B. McGINTY,
Secretary.

(Seal)

333 Mr. Godman: I will now offer in evidence as Plaintiffs' Exhibit 2 copy of the report and decision of the Interstate Commerce Commission in No. 9977, Chicago Live Stock Exchange *vs.* Atchison, Topeka and Santa Fe Railway, the Director General as Agent, et al., submitted January 10, 1920, and reported in Volume 58 of the Interstate Commerce Commission Reports, at page 164.

The Court: And it is filed with the pleadings as Exhibit B, so I am advised.

Mr. Hillyer: Yes, you have a copy of it there.

Mr. Godman: This Plaintiffs' 2, if the Court please, will include the opinion of the Commission and the order entered in connection therewith. Is Plaintiffs' Exhibit 2 received?

The Court: Yes.

Whereupon said document marked Plaintiffs' Exhibit 2 was received in evidence, and is in the words and figures following, to-wit:

334 PLAINTIFFS' EXHIBIT 2. Plaintiffs' Exhibit 2.

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INTERSTATE COMMERCE COMMISSION.

Investigation and Suspension Docket No. 1118.

Live Stock Loading and Unloading Charges.

No. 9977.

Chicago Live Stock Exchange

v.

Atchison, Topeka & Santa Fe Railway Company, Director General, As Agent, *Et Al.*

Submitted January 10, 1920. Decided July 15, 1920.

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1. Former finding, 52 I. C. C., 209, that loading and unloading of live stock, in carloads, at the Chicago stockyards is a duty of the shipper, reversed.

2. Collection of separate charges from shipper for unloading and loading live stock in addition to the rates on live stock to and from Chicago stockyards found to have been an unlawful and unreasonable practice. Reparation awarded.

3. The stockyards at Chicago found to be terminals of the line-haul carriers, the Chicago Junction Railway, and the stockyard company.

C. R. Hillyer and Sims, Welch & Godman for complainant.

S. H. Cowan, Clifford Thorne, and Graddy Cary for National Live Stock Shippers Protective League and American National Live Stock Association; R. D. Rynder for Swift & Company; Clifford Thorne, Ralph Merriam, and A. Sykes for Corn Belt Meat Producers Association; A. F. Stryker for Omaha Live Stock Exchange; Edward F. Keefer for Illinois Live Stock Association and National Live Stock Shippers League; W. H. Timmel for Sioux City Live Stock Exchange; A. E. Helm for Public Utilities Commission of the State of Kansas; Walter Condran for Board of Railroad Commissioners of Iowa; F. B. Edmonds for Cincinnati Live Stock Exchange; Samuel Jefferis for Pittsburgh Live Stock Exchange; and John G. Meister for Peoria Live Stock Exchange.

Winston, Strawn & Shaw and John C. Slade for Union Stock Yard & Transit Company and Chicago Junction Railway Company.

R. H. Widdicombe, Kenneth F. Burgess, W. F. Dickinson, J. N. Davis, James Stillwell, and T. J. Norton for line-haul defendants.

335 Report of the Commission on Further Hearing.

McChord, Commissioner:

On petitioners of interested parties these cases reported in 52 I. C. C., 209, were reopened for further hearing with respect to the following questions:

1. The amount of the loading and unloading charges for live stock at the Chicago stockyards.

2. The amount of such charges, if any, that should be imposed upon shippers of live stock, or should be absorbed by the defendants.

3. Whether the stockyards are the terminals of the Chicago Junction Railway Company, and,

4. Whether the tariff arrangements between the Union Stock Yard & Transit Company and the other defendants with respect to delivery and handling of live stock at the stockyards are in compliance with the act.

Further hearing was had and a proposed report prepared by the examiner was served on the parties. Exceptions were filed and the cases were orally argued before us.

This proceeding grows out of the increases on May 21, 1917, in the charges of the Union Stock Yard & Transit Company, hereinafter called the stockyard company, for unloading and loading live stock at Chicago from 25 and 50 cents per car to 50 and 75 cents, respectively. The carriers transporting live stock to and from Chicago had borne or absorbed the former charges, but refused to bear or absorb the increase in the charges, with the result that the stockyard company collected and retained such additional charges from the shipper. Subsequently the stockyard company attempted to cancel its tariff naming the unloading and loading charges and make them the subject of an operating arrangement between itself and the carriers, but upon protest the proposed cancellation was suspended.

In our original report we found, among other things, that the loading and unloading of live stock at the stockyards in Chicago is the duty of the shipper, and that the stockyards are the terminals for the receipt and delivery of live stock of the railroad utilizing them. The controversy chiefly relates to these two findings. There are other findings that are the subject of exceptions and protests, which will be considered later. It is the contention of the line-haul defendants that the question of the duty of the shipper to perform loading and unloading service is not involved in the questions with respect to which the cases were reopened. This contention is not tenable because the question of whether the shipper or carriers are obligated to render the service is inextricably bound up with the question of whether the charges may lawfully be imposed on the shipper. In so far as the future is considered this question is concluded by the transportation act, 1920. That act, amending section 15 of the interstate commerce act, with certain exceptions not here material, provides that—

> transportation wholly by railroad of ordinary live stock in carload lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments without extra charge therefor to the shipper, consignee, or owner, * * *.

Since the passage of this act the line-haul carriers have provided for the absorption of the charges of 50 cents and 75

cents for unloading and loading live stock, respectively, published by the stockyard company.

The facts in this case are not in dispute. For more than 50 years carriers delivering live stock at the stockyards in Chicago have loaded and unloaded live stock, and made no charge therefor against the shipper. More than 4,000 cars of live stock are frequently delivered at the stockyards in Chicago on a single day. It is manifest that if the consignees or shippers undertook to unload their inbound shipments, or to load outbound shipments, there would result such confusion and congestion at the stockyards as seriously to interfere with orderly and prompt performance of the service. Counsel for the line-haul carriers conceded at the hearing that the shipper can not go to the stockyards and physically load or unload his live stock; but their contention is that he should do it financially. Under the regulations of the stockyard company no shipper is permitted to perform the service, even if he should demand the right to do so. The line-haul rates to Chicago, plus a charge of $2 for terminal or switching service, have for years constituted the through charge and included delivery of live stock to the consignee at the stockyards. For the reasons stated we are of opinion that our finding that it is the duty of the shipper to load and unload live stock in the stockyards at Chicago was error, and it is therefore reversed. And we now find that it was the duty of the carriers to unload and load live stock at that point.

In *United States* v. *Union Stock Yard,* 226 U. S., 286, the Supreme Court held that the stockyard company was a common carrier. At the time of that decision there existed a lease between the stockyard company and the Chicago Junction Railway, hereinafter called the Junction company, which had about 35 years to run, by the terms of which the stockyard company granted all its railroad property to the Junction company and for which the latter paid two-thirds of its profit as rental. Shortly after that decision this lease was canceled and the parties entered into a new lease under
336 the terms of which the Junction company was granted, in perpetuity, all the property covered by the former lease, for which it agreed to pay a rental of $600,000 per year. The character of the service has remained the same. The change in the lease has made no practical change in the status of the stockyard company since the decision of the Supreme Court. We adhere to our finding that the stockyard company is a common carrier engaged in interstate commerce. As

the services of unloading and loading are part of the transportation of live stock the collection of separate charges from the shippers for unloading or loading in addition to the rates on live stock from and to interstate points to and from the stockyards was an unlawful and unreasonable practice.

Considering the fact that, except under certain conditions not material here, the services of unloading and loading at the stockyards are included in the transportation of live stock and no extra charge can be made for these services, it becomes unnecessary to pass upon the reasonableness of the separately established charges of the stockyard company for unloading and loading live stock.

The apprehensions of the line-haul carriers that the stockyard company may make any charge it pleases, which they will be required to pay, are not well founded. Upon their complaint or upon the complaint of any party, we can examine any of the charges that make up the sum of the through charges, and may prescribe just and reasonable rates for all carriers concerned, either by prescribing through routes and joint rates and the divisions thereof, or otherwise, as the facts may warrant.

The examiner proposed that we find that the stockyards are the terminals of the Junction company. The inducement for that suggestion was doubtless that the Junction company and the stockyard company together constitute a railroad company, subject to the act, as found by the Supreme Court. The line-haul carriers vigorously contend that the stockyards may not with propriety be held to be their terminals. They point to the fact that their rates carry the live stock to connecting lines in the Chicago switching district, and that the $2 switching charge is for the movement from their connection with the Junction company's rails to the platforms of the stockyard company. They also assert that they do not own, and do not have any control over, the platforms, chutes, or pens of the stockyard company.

Standing alone the stockyards could not be readily availed of by shippers. Were it not for the tracks of the Junction company delivery of cattle in carloads would not be possible. It requires the line-haul carriers, the Junction company, and the stockyard company to make the stockyards an effective agency of interstate commerce. Under this state of facts we are of opinion and find that the stockyards are in effect terminals of the line-haul carriers, the Junction company, and the stockyard company.

We further find that shippers who paid and bore charges for unloading and loading live stock at the stockyards in addition to the rates to and from the stockyards and who are parties of record herein have been damaged in the amount of such charges and are entitled to reparation, with interest from the date of such payment. The exact amount of reparation due each shipper can not be determined on this record, and they should comply with rule V of the Rules of Practice.

By the Commission.

GEORGE B. McGINTY,
(Seal) *Secretary.*

337 Whereupon the jury retired and the following proceedings were had out of the presence of the jury:

Mr. Godman: If the Court please, the Receivers of the Chicago and Alton Railroad are made parties defendant in this matter, and on motion of the plaintiff I will ask that they be dismissed.

Mr. Towner: The order will be that they are dismissed, as to the Receivers of the Alton.

The Court: Yes.

Mr. Godman: Dismissed on motion of the plaintiff.

And afterwards, to-wit, on January 8, 1930, the following proceedings were had in the presence of the jury:

Mr. Godman: If the Court please, I offer in evidence as Plaintiffs' Exhibit 3 the opinion and decision of the Interstate Commerce Commission in No. 9917, *Chicago Live Stock Exchange* vs. *Atchison, Topeka and Santa Fe Railway, et al.*, which is reported in the 100 Interstate Commerce Commission report, submitted November 13, 1924, and decided June 2, 1925.

The Court: Any objection?

Mr. Towner: No, Your Honor.

The Court: It may be admitted.

Whereupon said document, marked Plaintiffs' Exhibit 3, was received in evidence, and is in the words and figures following, to-wit:

338 PLAINTIFFS' EXHIBIT 3. Plaintiffs' Exhibit 3.

ADP

10461

INTERSTATE COMMERCE COMMISSION

No. 9977

Chicago Live Stock Exchange v. *Atchison, Topeka & Santa Fe Railway Company et al.*

No. 9977[1]

Chicago Live Stock Exchange v. *Atchison, Topeka & Santa Fe Railway Company et al.*

Submitted November 13, 1924. Decided June 2, 1925.

Upon further hearing, reparation found due on account of the unlawful collection of separate charges for the loading and unloading of livestock, in carloads, at the Chicago stockyards. Former report, 58 I. C. C. 164.

C. R. Hillyer, Sims, Welch, Godman & de Young, Everett C. Brown, D. C. Mosier, and H. R. Park for complainants.

F. E. Andrews for western trunk-line carriers; James Stillwell, J. L. Aber, and D. P. Connell for Central Freight Association lines; John F. Finerty and Thomas M. Woodward for Director General of Railroads, as agent; and Ralph M. Shaw, Frank H. Towner, and Guy A. Gladson for Union Stock Yard & Transit Company, defendants.

Nuel D. Belnap, Luther M. Walter, and John S. Burchmore for Morris & Company and Wilson & Company, Incorporated; Paul E. Blanchard for Armour & Company; and R. D. Rynder and P. L. Holden for Swift & Company and various other interveners.

Report of the Commission on Further Hearing.

McChord, Commissioner:

Defendants have filed exceptions to the report proposed by

[1]This report also embraces No. 12614, Chicago Live Stock Exchange et al. v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.

the examiner, and the parties have been heard in oral argument. We reach the conclusions proposed.

In our report of July 15, 1920, on further hearing, in No. 9977, 58 I. C. C. 164, we found that the "shippers who paid and bore the charges * * * and who are parties of record herein" are entitled to reparation, following a finding that the collection, between May 21, 1917, and April 1, 1920, of separate charges from shippers for loading and unloading ordinary livestock at, in addition to the rates to and from, Chicago stockyards was an unlawful and unreasonable practice. As the record then before us did not indicate the amount of reparation due each shipper, the parties were requested to
339 comply with Rule V of the Rules of Practice. On behalf of complainants this was done in the early part of 1921, upon a form which embraced the essential information required in reparation statements. Separate statements were prepared for each of the line-haul defendants which handled the traffic into and out of Chicago, the shipments having been listed thereon in chronological order. Copies of these statements were filed with us as well as with each of the interested carriers, and in a number of instances their accuracy was attested by accounting officers of the carriers. Several of the interveners, for the most part the larger packers and companies affiliated with them, also submitted reparation statements prepared in the usual manner, and in some instances they have been certified by carriers' auditing departments as correct. In the meantime, however, there had been raised by counsel for the Director General of Railroads, as agent, and upon the Union Stock Yard & Transit Company, hereinafter called the stockyard company, questions as to who were the parties of record entitled to reparation, and which among the defendants should satisfy any order of reparation which might be entered.

The complaint in No. 9977, filed November 17, 1917, brought in issue interstate shipments and named as complainant only the Chicago Live Stock Exchange. While the latter was described in the body of the complaint as "an association of persons, firms, and corporations" whose membership consisted of "livestock commission merchants, owners and raisers of cattle engaged in the buying, selling, receiving, and shipping of livestock in interstate and foreign commerce," and it was recited "that the said association represents every shipper and receiver of livestock at every station in the United States shipping to and from the public livestock market located at the Union Stock Yards in the city of Chicago, Ill.," hereinafter re-

ferred to as the stockyards, none of the parties so described were specifically named in the complaint. On June 16, 1919, counsel for complainant transmitted to us, apparently without service on the defendants, "a printed list of farmers, stock raisers, and shippers throughout the country who have made shipments to and from the Chicago market during the past two years and who have paid the charges under investigation in this proceeding." However, the complainants and their shipments were identified by reason of the fact that none but members of the exchange were permitted to do business through the stockyards, participant in the transportation, where all such members were known and where their shipments were matters of record.

Because of the delay encountered in adjusting the matter of reparation, and with a view to meeting the various questions raised by counsel for defendants, the complaint in No. 12614 was filed February 25, 1921. The issues in this complaint are in substance the same as those in No. 9977. In addition, it names the director general, as agent, as a defendant, alleges violation of the Federal control act, covers shipments within the State of Illinois during the period of Federal control, and also includes interstate shipments from the date of filing the first complaint to the end of the reparation period. It specifically names in the body thereof the 103 members of the complainant association and recites that it is filed in their behalf, severally and collectively, and also as factors and agents on behalf of the owners, consignors, and consignees of the shipments to and from the stockyards. All of the latter parties are listed in an appendix to the complaint.

By virtue of paragraphs (c) and (f) of section 206 of the transportation act, 1920, the complaint in No. 12614 embraces all shipments, other than those intrastate outside of the period of Federal control, which moved, during the period of two years, plus the Federal control period, which preceded the filing of the complaint. *Cohn* v. *C., M. & St. P. Ry. Co.*, 96 I. C. C. 257. The complaint is filed for and in behalf of the members of the complainant exchange and others therein listed and is equally their complaint. *Michigan Hardwood Mfrs. Asso.* v. *Freight Bureau*, 27 I. C. C. 32.

The amount of reparation here sought will probably total somewhere between $225,000 and $250,000. The shipments embraced in the reparation claims fall into two general classes, namely, interstate shipments throughout the reparation period, including those made prior and subsequent to, as well as during, Federal control, and intrastate shipments during Fed-

eral control. The findings in our former report, 58 I. C. C. 164, covered interstate shipments which were made up to the time of taking the testimony supporting those findings, viz., May 22, 1919. With respect to interstate shipments made since that time it is established that they moved from and to the same general territories, were either unloaded or loaded at the stockyards, and the same charge was assessed; and that the facts, circumstances, and conditions surrounding these shipments, as well as the intrastate shipments during Federal control, are in all substantial respects the same as those related of record covering the interstate shipments in the original complaint. Supplementing the findings in our former report, 58 I. C. C. 164, we find that the collection of separate charges from complainants and interveners for the service of unloading and loading interstate shipments of ordinary livestock at the Chicago stockyards, in addition to the line-haul rates on such livestock, during the reparation period hereinbefore defined, and intrastate shipments during the period of Federal control, was an unlawful and unreasonable practice.

340 We further find that the following parties of record, either as interveners or complainants other than members of the exchange, have established by competent testimony that they both paid and bore the charges herein found unlawful and unreasonable, and that they have been damaged in the amount of such charges and are entitled to reparation with interest from the date of such payment:

Armour & Company.
Wilson & Company, Incorporated.
Morris & Company.
Jos. Stearn & Sons, Incorporated.
Swift & Company.
Plankington Packing House.
White, Peavey & Dexter.
Springfield Provision Company.
Sperry & Barnes Company.
John P. Squire & Company.
United Pressed Beef Company.
Sturtevant & Haley Beef & Supply Company.
North Packing & Provision Company.
Kerber Packing Company.
Nagle Packing Company.

The foregoing parties paid the charges in question, either as consignees at Chicago for the service of unloading at that

point, or as consignees at other points for the service of loading at Chicago, and in each case the charges were paid direct to the line-haul carriers at Chicago or the other points.

The following parties appeared for the first time and offered testimony as interveners in the hearings at Boston on February 24, 1923. Their claims are barred from consideration by the statute of limitations;

New England Dressed Meat & Wool Company.
Brighton Dressed Meat Company.
William H. Monroe.

Most of the reparation claimed is by the livestock commission merchants, members of the exchange, covering amounts collected from them for the unloading service at the stockyards. They seek reimbursement in their own names and right as parties to the transportation transactions who paid the charges to the defendant carriers and also as factors and agents for and on behalf of the livestock shippers who were the consignors. While it is admitted that in each and every instance the charge which was paid by the commission merchant was subsequently charged back and collected from the consignors, this would not affect the right of the complainant consignees to awards of reparation. There is a direct and well-established relation between the complaining members of the exchange and their shippers by which the former are fully authorized to present these claims and seek awards of reparation in their own names as factors and agents for such shippers. The commission merchant at the stockyards not only disposes of the shipper's stock at the market and at such price as he deems best, but is his agent in the payment of freight and related charges, such as feeding, etc., and in the filing of claims for overcharge and for loss and damage to the stock in transit. Defendants have frequently recognized this relationship by settling loss and damage claims with the commission merchants. The right of factors in their representative capacity to recover reparation in their own names for unlawful and unreasonable charges is settled. *Memphis Freight Bureau* v. *St. L. & S. F. R. R. Co.*, 57 I. C. C. 212.

We find that the following individuals, copartnerships, and corporations, parties of record, made the shipments as described in this and our preceding reports and paid the charges thereon, herein and heretofore found to have been unreasonable and unlawful; that they have been damaged in the amount of such charges and are severally entitled to reparation, as

factors and agents for the shippers, with interest from date of payment:

National Livestock Commission Company (corporation).

Bowles Livestock Commission Company (corporation).

John P. Martin, James G. Martin, George E. Martin, and Wm. S. Burmister, copartners trading as Martin Bros. & Company.

Kay Wood and Chas. A. Wood, copartners trading as Wood Bros.

Iowa Livestock Commission Company (corporation).

John A. Babcock, individual trading under the name of John A. Babcock & Company.

James R. Clegg, individual trading under the name of James R. Clegg & Company.

W. Harry Sherwood and Russell H. Sherwood, copartners trading as Sherwood & Son.

S. G. Gillogly, R. E. Gillogly, F. D. Gillogly, and F. T. Gillogly, copartners trading as Gillogly & Company.

Thos. K. Polley, individual trading as Thos. K. Polley & Company.

L. S. Larrison, individual trading as L. S. Larrison & Company.

J. F. Cross and H. G. Sommers, copartners trading as Cross, Sommers & Company.

T. B. Stafford and A. B. Stafford, copartners trading as Stafford Bros.

W. E. Young, individual trading as W. E. Young & Company.

J. J. Sullivan and J. C. Sullivan, copartners trading as Sullivan Commission Company.

G. B. Van Norman, individual trading as G. B. Van Norman & Company.

W. A. Peterson and Wm. Turnbull, copartners trading as Peterson, Turnbull & Company.

W. A. Peterson, surviving partner of the copartnership composed of Frank Bacon and W. A. Peterson, trading as Bacon, Peterson & Company.

Evans, Snider, Buel Company (corporation).

A. F. Stewart, individual trading as A. F. Stewart & Company.

F. C. Ludeman, individual trading as F. C. Ludeman & Company.

Jet Wimp, individual trading as Jet Wimp & Company.

R. H. Pritchard, individual trading as Pritchard Commission Company.

Guy Wheeler and T. K. Polley, copartners trading as Emmett, Wheeler & Polley.

341 W. W. Wilson and Chas. A. Wilson, copartners trading as W. W. Wilson & Company.

A. A. Walters, C. A. Dunbar and J. H. Dunbar, copartners trading as Walters & Dunbar.

Geo. F. Hogan, individual trading as Geo. F. Hogan & Company.

Central Livestock Commission Company (corporation).

Fred L. Heyne and D. H. Baker, copartners trading as Baker, Heyne & Company.

John Clay, John G. Forrest, C. A. Kleman, F. H. Connor, and C. L. Robinson, copartners trading as Clay, Robinson & Company.

I. W. Knettle and Edwin Knettle, copartners trading as Knettle Bros.

Standard Livestock Commission Company (corporation).

W. R. Smith, J. C. Eastes, and John Smith, copartners trading as W. R. Smith & Company.

McCausland, Hoag & Vaughn (corporation).

S. S. Driver, individual trading as S. S. Driver & Company.

Northwestern Livestock Commission Company (corporation).

Lee Livestock Commission Company (corporation).

Van Norman, Lawler & Company (corporation).

A. B. Daniels (individual).

Alexander, Conover & Martin (corporation).

J. B. Cahill, individual trading as J. B. Cahill & Company.

A. M. Henneberry and N. W. Cochran, copartners trading as Cochran & Henneberry.

Chas. R. Rice and Oscar A. Rice, copartners trading as Rice Bros.

P. J. Fitzgerald and G. S. Freeman, copartners trading as Freeman, Fitzgerald & Company.

L. B. Werden (individual).

Ernest Clark and Louis Armbrecht, copartners trading as Clark, Armbrecht & Company.

Wm. B. Swinney, Chas. M. Swinney, and Thos. E. Swinney, copartners trading as Swinney Bros., successors in interest to Bunker & Swinney.

W. H. Walter, individual trading under the name of Walter Bros.

D. L. Trout and F. L. Trout, copartners trading as Trout Livestock Commission Company.

Geo. J. Adams and A. W. Kitchen, copartners trading as Adams & Kitchen.

J. M. Corrick (individual).

Rosenbaum & Company (corporation).

A. Warheimer, E. H. Ingwerson, J. H. Ingwerson, Dan R. Ingwerson, D. C. Mosier, and A. C. Barroff, copartners trading as Ingwerson Bros.

Fred Freeman, individual trading as Fred Freeman & Company.

Thos. H. Brown (individual).

C. A. Ingwerson (individual).

J. M. Doud & Company (corporation).

J. E. Strader and J. L. Strader, copartners trading as Strader Bros.

Conklin Bros. Commission Company (corporation).

J. Paul Shinn, Chas. H. Moberly, and I. O. Fry, copartners trading as Shinn, Fry & Moberly, successors to Shinn, Fry & Company.

J. P. Maley and Harry L. Carpenter, copartners trading as Maley, Carpenter & Company.

Frank R. Mullen, individual, trading as Mullen Commission Company.

George M. Brownson and J. L. Ettlinger, copartners trading as Brownson & Ettlinger.

Miller, White & Woods (corporation).

Filler, Wilson & McClelland (corporation).

Thos. Tipton, E. M. Steck, and W. P. Herrick, copartners trading as Tipton, Steck & Herrick.

John G. Adler and Alfred E. Adler, copartners trading as Adler Sons & Company.

G. W. Nixon, C. S. Horn, and W. H. Chisholm, copartners trading as Nixon, Horn & Chisholm.

L. B. Yancey (individual).

W. P. Collings, individual, trading as W. P. Collings & Son.

E. H. Kuenster, surviving partner of the copartnership of Erwin & Kuenster.

E. H. Kuenster, individual, trading as Kuenster Livestock Commission Company.

Wm. Gentleman, A. M. Gentleman, C. F. Gentleman, and J. G. Gentleman, copartners trading as Wm. Gentleman & Sons.

Robert S. Murray, individual trading as Murray & McDowell.

Chas. E. Harding, individual, trading as Chas. E. Harding & Company.

Hefner Commission Company (corporation).

A. Gilmore, C. L. Swanson, and C. J. Castenhold, copartners trading as Swanson, Gilmore & Castenhold.

Wm. Mahoney (individual).

A. J. Laberthe (individual).

Byers Brothers Company (corporation).

H. D. Copeland & Company (corporation).

Chas. E. Stephens and J. A. Goble, copartners trading as Stephens & Goble.

B. F. Hubbird, individual, trading under the name of Minteer, Hubbird & Company.

J. B. Roach and W. P. Roach, copartners trading as the Roach Livestock Commission Company.

E. C. Brown and Seth B. St. John, copartners trading as Brown-St. John Company.

Harry Thompson and C. N. Ball, copartners trading as Thomson & Ball.

J. W. Eastland, individual trading as J. W. Eastland & Company.

Chas. R. Beason and P. E. Moore, copartners trading under the name of Drovers Commission Company.

E. A. Clark, surviving partner of the copartnership composed of B. B. Bowles and E. A. Clark, trading under the name of Clark, Bowles & Company.

P. T. Dolan, surviving partner of the copartnership composed of Chas. P. Miller and P. T. Dolan, trading under the name of Miller & Dolan.

P. T. Dolan and Fred Ludeman, copartners trading as Dolan & Ludeman.

A. F. Starett, jr., O. A. Mathison, A. C. Granger, and M. E. Peschong, copartners trading as Starett, Mathison & Company.

Curtis A. Wood and Walter R. Wood, copartners, trading as Curtis A. Wood & Company.

Silas Palmer and W. H. Palmer, copartners trading as Silas Palmer & Son.

W. C. Patterson, surviving partner of the copartnership composed of Philip Fortin and W. C. Patterson, trading as John Patterson & Son.

O. D. Freeland and C. M. Godfrey, copartners trading as Freeland & Godfrey.

James G. Shutter (individual).

T. B. Vincent and C. H. Bothroyd, copartners trading as the Paris Commission Company.

F. W. Sheldon, individual trading as F. W. Sheldon & Company.

342 J. H. Piatt, individual trading as Abner Piatt & Company.

Knollin Sheep Commission Company (corporation).

North American Livestock Commission Company (corporation.

It developed that some of the reparation statements embraced intrastate shipments which moved both prior and subsequent to Federal control. As to such shipments we are without authority to award reparation and it was understood by counsel that before these statements were finally submitted to the carriers for checking, prior to the entry of any reparation order which might be issued, they would be eliminated.

It also developed that for short periods of time following the establishment of the increased loading and unloading charge on May 21, 1917, a number of the line-haul carriers, all of whom were then represented by separate agents rather than by the joint agency which was established during the period of Federal control, failed or omitted to add the extra 25 cents to their freight bills or waybills, with the result that in such instances this amount was not, and apparently has not been, collected. So far as applicable to shipments coming under our jurisdiction, collection of these undercharges may be waived.

The foregoing complainants and interveners found entitled to reparation should severally prepare statements in accordance with Rule V of the Rules of Practice, separated as to participating defendant carriers, including as a defendant the stockyard company and also including the Director General of Railroads, as agent, in appropriate cases in No. 12614. The statements should be submitted to the appropriate defendants for verification. If not so verified within a reasonable time, they should be filed here for check upon the record, with a view to the entry of an order awarding reparation.

Hall, Commissioner, concurring:

I join in the award of reparation to those complainants only as constrained thereto by the decision of the majority in *Missouri Portland Cement Co.* v. *Director General*, 88 I. C. C. 492, and am authorized by Commissioners Esch, Lewis, and Cox, to say that their participation in the award is under the same constraint.

343 Mr. Towner: May it be understood that the plaintiffs whose names you are now reading are named as plaintiffs in this case.

Mr. Godman: They are complainants in 12614 and plaintiffs in this pending case we are now trying.

Mr. Godman: Now I offer the copy of the order of the Interstate Commerce Commission made December 12, 1927, in No. 9977, *Chicago Live Stock Exchange* v. *the Atchison, Topeka and Santa Fe Railway, et al.*, No. 12614; the same is against the first Director General, as Agent, of the Atchison, Topeka and Santa Fe Railway, this being a reparation order.

The Court: Do you make an objection to it?

Mr. Towner: No.

The Court: Very well, let it be admitted.

Whereupon said document, marked Plaintiffs' Exhibit 4 was received in evidence, and is in the words and figures following, to-wit:

344 PLAINTIFF'S EXHIBIT 4.

A. D. P.

Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 12th day of December, A. D. 1927.

No. 9977

The Chicago Live Stock Exchange

v.

The Atchison, Topeka & Santa Fe Railway Company *et al.*

No. 12614

Same

v.

Director General, as Agent, The Atchison, Topeka & Santa Fe Railway Company, *et al.*

It appearing, That on February 11, 1919, the commission entered its report, and on July 15, 1920, and June 2, 1925, its reports on further hearings in the above-entitled proceed-

ings, which reports are hereby referred to and made a part hereof, and these proceedings now coming on for further consideration on the question of reparation, and the parties having filed agreed statements with respect to the shipments in question, showing, among other things, the dates on which payment of the charges assailed was made; we find that complainants shown in the following table are entitled to awards of reparation from the defendants named below in the amounts set opposite their respective names, with interest:

Complainants		Defendants	Amount
Geo. J. Adams and A. W. Kitchen, copartners trading as Adams & Kitchen		USY&TCo. and CGW	$ 1.25
	Do	USY&TCo. and C&A	.50
	Do	USY&TCo. and DG for C&A	2.75
	Do	USY&TCo. and DG for CGW	19.75
	Do	USY&TCo. and DG for Erie	.50
	Do	USY&TCo. and PM	.25
	Do	USY&TCo. and DG for PM	1.50
	Do	USY&TCo. and NYC	.50
	Do	USY&TCo. and DG for NYC	3.25
	Do	USY&TCo. and CI&L	.25
	Do	USY&TCo. and DG for CI&L	6.25
	Do	USY&TCo. and DG for PCC&StL and Penn	1.00
	Do	USY&TCo. and Penn	.50
	Do	USY&TCo. and Soo	.25
	Do	USY&TCo. and MC	.50
	Do	USY&TCo. and C&EI	1.75
	Do	USY&TCo. and DG for C&EI	65.25
	Do	USY&TCo. and DG for MC	.25
	Do	USY&TCo. and DG for Soo	.75
	Do	USY&TCo. and DG for AT&SF	25.00
	Do	USY&TCo. and DG for Wab	6.50
	Do	USY&TCo. and DG for GT	3.75
	Do	USY&TCo. and DG for Penn	2.00
	Do	USY&TCo. and DG for CRI&P	71.50
	Do	USY&TCo. and DG for CB&Q	299.75
345	Do	USY&TCo. and DG for CM&StP	$ 88.50
	Do	USY&TCo. and DG for IC	47.50
	Do	USY&TCo. and AT&SF	2.25
	Do	USY&TCo. and CB&Q	44.75
	Do	USY&TCo. and CRI&P	6.25
	Do	USY&TCo. and IC	1.25
	Do	USY&TCo. and CM&StP	4.25
	Do	USY&TCo. and DG for C&NW	121.00
	Do	USY&TCo. and C&NW	28.25
John G. Adler and Alfred E. Adler, copartners trading as Adler Sons & Company		USY&TCo. and CGW	5.75
	Do	USY&TCo. and DG for C&A	8.00
	Do	USY&TCo. and DG for CGW	5.75
	Do	USY&TCo. and DG for NYC	2.00
	Do	USY&TCo. and DG for CI&L	.50

	Complainants	Defendants	Amount
	Do	USY&TCo. and Soo	.50
	Do	USY&TCo. and C&EI	.75
	Do	USY&TCo. and DG for C&EI	14.25
	Do	USY&TCo. and DG for MC	.50
	Do	USY&TCo. and DG for Soo	1.25
	Do	USY&TCo. and DG for AT&SF	12.75
	Do	USY&TCo. and DG for Wab	1.25
	Do	USY&TCo. and DG for GT	.25
	Do	USY&TCo. and DG for NYC&StL	.50
	Do	USY&TCo. and DG for CRI&P	194.75
	Do	USY&TCo. and DG for CB&Q	171.75
	Do	USY&TCo. and DG for CM&StP	33.25
	Do	USY&TCo. and DG for IC	31.25
	Do	USY&TCo. and AT&SF	.75
	Do	USY&TCo. and CB&Q	3.00
	Do	USY&TCo. and CRI&P	3.50
	Do	USY&TCo. and IC	4.25
	Do	USY&TCo. and CM&StP	4.00
	Do	USY&TCo. and DG for C&NW	50.50
	Do	USY&TCo. and C&NW	16.50
	Alexander, Conover & Martin	USY&TCo. and DG for B&O	3.75
	Do	USY&TCo. and CGW	5.75
	Do	USY&TCo. and C&A	41.75
	Do	USY&TCo. and DG for C&A	265.00
	Do	USY&TCo. and DG for CGW	63.50
	Do	USY&TCo. and DG for Erie	7.50
	Do	USY&TCo. and PM	.25
	Do	USY&TCo. and DG for PM	9.75
	Do	USY&TCo. and Erie	1.00
	Do	USY&TCo. and Wab	10.25
	Do	USY&TCo. and NYC	6.75
	Do	USY&TCo. and DG for NYC	104.50
	Do	USY&TCo. and CI&L	5.75
	Do	USY&TCo. and DG for CI&L	85.75
	Do	USY&TCo., PCC&StL, and Penn	2.25
	Do	USY&TCo. and DG for PCC&StL and Penn	55.25
	Do	USY&TCo. and NYC&StL	.25
	Do	USY&TCo. and GT	5.00
	Do	USY&TCo. and Penn	4.25
346	Do	USY&TCo. and Soo	$ 14.50
	Do	USY&TCo. and MC	6.50
	Do	USY&TCo. and C&EI	20.00
	Do	USY&TCo. and DG for C&EI	203.75
	Do	USY&TCo. and DG for MC	6.50
	Do	USY&TCo. and DG for Soo	15.50
	Do	USY&TCo. and DG for AT&SF	351.00
	Do	USY&TCo. and DG for Wab	200.75
	Do	USY&TCo. and DG for GT	15.75
	Do	USY&TCo. and DG for NYC&StL	4.50
	Do	USY&TCo. and DG for Penn	15.50
	Do	USY&TCo. and DG for CRI&P	318.50
	Do	USY&TCo. and DG for CB&Q	822.25
	Do	USY&TCo. and DG for CM&StP	299.00
	Do	USY&TCo. and DG for IC	333.75
	Do	USY&TCo. and AT&SF	39.75
	Do	USY&TCo. and CB&Q	178.25
	Do	USY&TCo. and CRI&P	62.25
	Do	USY&TCo. and IC	22.75

	Complainants	Defendants	Amount
	Do	USY&TCo. and CM&StP	51.75
	Do	USY&TCo. and DG for C&NW	647.75
	Do	USY&TCo. and C&NW	122.25
	John A. Babcock, trading as John A. Babcock & Company	USY&TCo. and DG for B&O	.50
	Do	USY&TCo. and CGW	1.25
	Do	USY&TCo. and DG for CGW	5.75
	Do	USY&TCo. and DG for PCC&StL and Penn	.25
	Do	USY&TCo. and Soo	.50
	Do	USY&TCo. and DG for Soo	4.00
	Do	USY&TCo. and DG for Wab	.25
	Do	USY&TCo. and DG for CRI&P	400.75
	Do	USY&TCo. and CB&Q	77.50
	Do	USY&TCo. and DG for CM&StP	99.00
	Do	USY&TCo. and DG for IC	6.50
	Do	USY&TCo. and CB&Q	24.00
	Do	USY&TCo. and CRI&P	54.25
	Do	USY&TCo. and IC	.50
	Do	USY&TCo. and CM&AtP	23.15
	Do	USY&TCo. and DG for C&NW	75.50
	Do	USY&TCo. and C&NW	26.25
	Fred L. Heyne and D. H. Baker, copartners trading as Baker Heyne & Company	USY&TCo. and CGW	3.75
	Do	USY&TCo. and C&A	.50
	Do	USY&TCo. and DG for C&A	41.50
	Do	USY&TCo. and DG for CGW	42.00
	Do	USY&TCo. and DG for PM	.75
	Do	USY&TCo. and DG for NYC	1.25
	Do	USY&TCo. and CI&L	.25
	Do	USY&TCo. and DG for PCC&StL and Penn	.50
	Do	USY&TCo. and GT	.50
	Do	USY&TCo. and Soo	.50
	Do	USY&TCo. and MC	.75
	Do	USY&TCo. and C&EI	.25
	Do	USY&TCo. and DG for C&EI	2.25
	Do	USY&TCo. and DG for Soo	8.25
347	Do	USY&TCo. and DG for AT&SF	$ 8.75
	Do	USY&TCo. and DG for Wab	37.75
	Do	USY&TCo. and DG for GT	2.25
	Do	USY&TCo. and DG for Penn	.25
	Do	USY&TCo. and DG for CRI&P	89.00
	Do	USY&TCo. and DG for CB&Q	108.50
	Do	USY&TCo. and DG for CM&StP	141.50
	Do	USY&TCo. and DG for IC	111.00
	Do	USY&TCo. and AT&SF	.75
	Do	USY&TCo. and CB&Q	4.00
	Do	USY&TCo. and CRI&P	9.00
	Do	USY&TCo. and IC	8.50
	Do	USY&TCo. and CM&StP	12.25
	Do	USY&TCo. and DG for C&NW	471.25
	Do	USY&TCo. and C&NW	83.50
	W. A. Peterson, trading as Bacon, Peterson & Company	USY&TCo. and CGW	6.00
	Do	USY&TCo. and C&A	1.00
	Do	USY&TCo. and DG for C&A	104.00

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for CGW	76.00
	Do	USY&TCo. and DG for Erie	.25
	Do	USY&TCo. and PM	.25
	Do	USY&TCo. and DG for PM	.50
	Do	USY&TCo. and NYC	.25
	Do	USY&TCo. and DG for NYC	20.00
	Do	USY&TCo. and DG for CI&L	12.25
	Do	USY&TCo. and DG for PCC&StL and Penn	.25
	Do	USY&TCo. and GT	.25
	Do	USY&TCo. and Penn	.25
	Do	USY&TCo. and C&EI	.75
	Do	USY&TCo. and DG for C&EI	9.75
	Do	USY&TCo. and DG for Soo	.25
	Do	USY&TCo. and DG for AT&SF	172.75
	Do	USY&TCo. and DG for Wab	32.75
	Do	USY&TCo. and DG for GT	5.75
	Do	USY&TCo. and DG for NYC&StL	2.00
	Do	USY&TCo. and DG for Penn	1.75
	Do	USY&TCo. and DG for CRI&P	237.75
	Do	USY&TCo. and DG for CB&Q	246.50
	Do	USY&TCo. and DG for CM&StP	79.00
	Do	USY&TCo. and DG for IC	92.25
	Do	USY&TCo. and AT&SF	7.25
	Do	USY&TCo. and CB&Q	5.75
	Do	USY&TCo. and CRI&P	40.50
	Do	USY&TCo. and IC	.75
	Do	USY&TCo. and CM&StP	17.75
	Do	USY&TCo. and DG for C&NW	93.00
	Do	USY&TCo. and C&NW	31.25
	Bowles Livestock Commission Company	USY&TCo. and DG for B&O	38.75
	Do	USY&TCo. and CGW	43.00
	Do	USY&TCo. and C&A	11.75
	Do	USY&TCo. and DG for C&A	226.50
	Do	USY&TCo. and DG for CGW	270.00
348	Do	USY&TCo. and DG for Erie	$ 26.75
	Do	USY&TCo. and PM	.25
	Do	USY&TCo. and DG for PM	10.00
	Do	USY&TCo. and Erie	1.75
	Do	USY&TCo. and Wab	4.25
	Do	USY&TCo. and NYC	6.00
	Do	USY&TCo. and DG for NYC	102.50
	Do	USY&TCo. and CI&L	1.75
	Do	USY&TCo. and DG for CI&L	67.25
	Do	USY&TCo., PCC&StL, and Penn	6.00
	Do	USY&TCo. and DG for PCC&StL and Penn	62.50
	Do	USY&TCo. and NYC&StL	1.50
	Do	USY&TCo. and GT	2.50
	Do	USY&TCo. and Penn	18.50
	Do	USY&TCo. and Soo	15.00
	Do	USY&TCo. and MC	3.25
	Do	USY&TCo. and C&EI	9.50
	Do	USY&TCo. and DG for C&EI	206.50
	Do	USY&TCo. and DG for MC	22.50
	Do	USY&TCo. and DG for Soo	21.75
	Do	USY&TCo. and DG for AT&SF	236.25
	Do	USY&TCo. and DG for Wab	154.75
	Do	USY&TCo. and DG for GT	19.00
	Do	USY&TCo. and DG for NYC&StL	11.00

Complainants	Defendants	Amount
Do	USY&TCo. and DG for Penn	85.75
Do	USY&TCo. and DG for CRI&P	417.25
Do	USY&TCo. and DG for CB&Q	1560.00
Do	USY&TCo. and DG for CM&StP	894.50
Do	USY&TCo. and DG for IC	451.00
Do	USY&TCo. and AT&SF	24.25
Do	USY&TCo. and CB&Q	217.00
Do	USY&TCo. and CRI&P	28.50
Do	USY&TCo. and IC	24.75
Do	USY&TCo. and CM&StP	244.75
Do	USY&TCo. and DG for C&NW	1119.75
Do	USY&TCo. and C&NW	175.75
E. C. Brown and Seth B. St. John, copartners trading as Brown-St. John Company	USY&TCo. and DG for B&O	.50
Do	USY&TCo. and CGW	16.50
Do	USY&TCo. and DG for C&A	14.00
Do	USY&TCo. and DG for CGW	42.75
Do	USY&TCo. and DG for Erie	1.00
Do	USY&TCo. and PM	.25
Do	USY&TCo. and DG for PM	2.00
Do	USY&TCo. and Wab	.50
Do	USY&TCo. and NYC	1.25
Do	USY&TCo. and DG for NYC	33.25
Do	USY&TCo. and DG for CI&L	5.00
Do	USY&TCo. and DG for PCC&StL and Penn	7.75
Do	USY&TCo. and Soo	2.00
Do	USY&TCo. and C&EI	.50
Do	USY&TCo. and DG for C&EI	5.25
Do	USY&TCo. and DG for MC	.75
Do	USY&TCo. and DG for Soo	4.50
Do	USY&TCo. and DG for AT&SF	70.50
349 Do	USY&TCo. and DG for Wab	$ 9.50
Do	USY&TCo. and DG for GT	4.25
Do	USY&TCo. and DG for NYC&StL	2.00
Do	USY&TCo. and DG for Penn	4.25
Do	USY&TCo. and DG for CRI&P	209.50
Do	USY&TCo. and DG for CB&Q	376.25
Do	USY&TCo. and DG for CM&StP	457.25
Do	USY&TCo. and DG for IC	22.00
Do	USY&TCo. and CB&Q	23.25
Do	USY&TCo. and CRI&P	36.25
Do	USY&TCo. and IC	2.25
Do	USY&TCo. and CM&StP	98.25
Do	USY&TCo. and DG for C&NW	173.50
Do	USY&TCo. and C&NW	22.50
Thos. H. Brown	USY&TCo. and DG for CGW	.75
Do	USY&TCo. and NYC	.25
Do	USY&TCo. and DG for NYC	.75
Do	USY&TCo. and DG for C&EI	.75
Do	USY&TCo. and DG for AT&SF	6.00
Do	USY&TCo. and DG for CRI&P	8.75
Do	USY&TCo. and DG for CB&Q	93.00
Do	USY&TCo. and DG for CM&StP	.50
Do	USY&TCo. and AT&SF	1.75
Do	USY&TCo. and CB&Q	25.50
Do	USY&TCo. and CRI&P	1.50
Do	USY&TCo. and CM&StP.	3.50

	Complainants	Defendants	Amount
	George M. Brownson and J. L. Ettlinger, copartners, trading as Brownson & Ettlinger	USY&TCo. and DG for B&O	3.50
	Do	USY&TCo. and C&A	.25
	Do	USY&TCo. and DG for C&A	5.75
	Do	USY&TCo. and DG for CGW	4.25
	Do	USY&TCo. and DG for Erie	.25
	Do	USY&TCo. and PM	6.50
	Do	USY&TCo. and DG for PM	36.75
	Do	USY&TCo. and Erie	.25
	Do	USY&TCo. and Wab	.25
	Do	USY&TCo. and NYC	15.50
	Do	USY&TCo. and DG for NYC	106.00
	Do	USY&TCo. and CI&L	.25
	Do	USY&TCo. and DG for CI&L	6.75
	Do	USY&TCo., PCC&StL and Penn	.50
	Do	USY&TCo. and DG for PCC&StL and Penn	12.50
	Do	USY&TCo. and NYC&StL	.50
	Do	USY&TCo. and Penn	6.50
350	Do	USY&TCo. and Soo	$ 6.25
	Do	USY&TCo. and MC	5.50
	Do	USY&TCo. and C&EI	.75
	Do	USY&TCo. and DG for C&EI	28.50
	Do	USY&TCo. and DG for MC	38.25
	Do	USY&TCo. and DG for Soo	2.00
	Do	USY&TCo. and DG for AT&SF	30.75
	Do	USY&TCo. and DG for Wab	10.75
	Do	USY&TCo. and DG for GT	13.25
	Do	USY&TCo. and DG for NYC&StL	12.00
	Do	USY&TCo. and DG for Penn	45.50
	Do	USY&TCo. and DG for CRI&P	107.00
	Do	USY&TCo. and DG for CB&Q	155.50
	Do	USY&TCo. and DG for CM&StP	33.75
	Do	USY&TCo. and DG for IC	35.50
	Do	USY&TCo. and CB&Q	8.00
	Do	USY&TCo. and CRI&P	11.75
	Do	USY&TCo. and IC	1.25
	Do	USY&TCo. and DG for C&NW	81.25
	Do	USY&TCo. and C&NW	20.75
	Byers Brothers Company	USY&TCo. and DG for B&O	.50
	Do	USY&TCo. and CGW	11.75
	Do	USY&TCo. and DG for C&A	1.25
	Do	USY&TCo. and DG for CGW	39.00
	Do	USY&TCo. and DG for PM	.25
	Do	USY&TCo. and NYC	.75
	Do	USY&TCo. and DG for NYC	2.50
	Do	USY&TCo. and DG for CI&L	.50
	Do	USY&TCo. and DG for PCC&StL and Penn	6.25
	Do	USY&TCo. and GT	.75
	Do	USY&TCo. and Penn	.25
	Do	USY&TCo. and Soo	3.50
	Do	USY&TCo. and DG for C&EI	2.25
	Do	USY&TCo. and DG for MC	.50
	Do	USY&TCo. and DG for Soo	5.50
	Do	USY&TCo. and DG for AT&SF	138.00
	Do	USY&TCo. and DG for Wab	9.25
	Do	USY&TCo. and DG for GT	1.75
	Do	USY&TCo. and DG for NYC&StL	1.75

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for Penn	.50
	Do	USY&TCo. and DG for CRI&P	103.25
	Do	USY&TCo. and DG for CB&Q	333.00
	Do	USY&TCo. and DG for CM&StP	122.75
	Do	USY&TCo. and DG for IC	55.50
351	Do	USY&TCo. and AT&SF	$ 2.25
	Do	USY&TCo. and CB&Q	40.00
	Do	USY&TCo. and CRI&P	32.00
	Do	USY&TCo. and IC	7.50
	Do	USY&TCo. and CM&StP	19.50
	Do	USY&TCo. and DG for C&NW	200.25
	Do	USY&TCo. and CNW	44.25
	Wm. B. Swinney, Chas. M. Swinney and Thos. E. Swinney, copartners trading as Swinney Bros., successors to Brunker & Swinney	USY&TCo. and DG for B&O	.75
	Do	USY&TCo. and CGW	3.25
	Do	USY&TCo. and DG for C&A	7.50
	Do	USY&TCo. and DG for CGW	21.50
	Do	USY&TCo. and DG for Erie	.25
	Do	USY&TCo. and DG for PM	.75
	Do	USY&TCo. and Wab	.50
	Do	USY&TCo. and NYC	1.75
	Do	USY&TCo. and DG for NYC	3.50
	Do	USY&TCo. and CI&L	.50
	Do	USY&TCo. and DG for CI&L	28.00
	Do	USY&TCo. and DG for PCC&StL and Penn	.75
	Do	USY&TCo. and Soo	50.50
	Do	USY&TCo. and MC	.25
	Do	USY&TCo. and DG for C&EI	2.25
	Do	USY&TCo. and DG for MC	2.50
	Do	USY&TCo. and DG for Soo	163.75
	Do	USY&TCo. and DG for AT&SF	61.50
	Do	USY&TCo. and DG for Wab	116.25
	Do	USY&TCo. and DG for Penn	2.25
	Do	USY&TCo. and DG for CRI&P	204.00
	Do	USY&TCo. and DG for CB&Q	118.75
	Do	USY&TCo. and DG for CM&StP	290.00
	Do	USY&TCo. and DG for IC	100.00
	Do	USY&TCo. and AT&SF	3.00
	Do	USY&TCo. and CB&Q	14.75
	Do	USY&TCo. and CRI&P	28.00
	Do	USY&TCo. and IC	.25
	Do	USY&TCo. and CM&StP	66.25
	Do	USY&TCo. and DG for C&NW	365.00
	Do	USY&TCo. and C&NW	94.25
	J. B. Cahill, trading as J. B. Cahill & Company	USY&TCo. and DG for C&A	110.25
	Do	USY&TCo. and DG for CGW	21.50
	Do	USY&TCo. and DG for NYC	11.75
	Do	USY&TCo. and DG for CI&L	3.75
352	Do	USY&TCo. and DG for PCC&StL and Penn	5.75
	Do	USY&TCo. and DG for C&EI	84.75
	Do	USY&TCo. and DG for MC	10.50
	Do	USY&TCo. and DG for Soo	29.00
	Do	USY&TCo. and DG for AT&SF	17.00
	Do	USY&TCo. and DG for Wab	9.50

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for Penn	3.00
	Do	USY&TCo. and DG for CRI&P	29.75
	Do	USY&TCo. and DG for CB&Q	40.00
	Do	USY&TCo. and DG for CM&StP	76.75
	Do	USY&TCo. and DG for IC	70.50
	Do	USY&TCo. and CRI&P	2.25
	Do	USY&TCO. and DG for C&NW	57.75
	Central Livestock Commission Company	USY&TCo. and DG for B&O	2.50
	Do	USY&TCo. and CGW	38.50
	Do	USY&TCo. and DG for C&A	1.00
	Do	USY&TCo. and DG for CGW	192.00
	Do	USY&TCo. and DG for Erie	.50
	Do	USY&TCo. and DG for PM	1.50
	Do	USY&TCo. and Wab	1.50
	Do	USY&TCo. and DG for NYC	2.00
	Do	USY&TCo. and DG for CI&L	9.25
	Do	USY&TCo. and DG for PCC&St L and Penn	4.00
	Do	USY&TCo. and NYC&StL	.25
	Do	USY&TCo. and GT	.25
	Do	USY&TCo. and Soo	7.50
	Do	UST&TCo. and DG for C&EI	16.50
	Do	USY&TCo. and DG for MC	.75
	Do	USY&TCo. and DG for Soo	36.25
	Do	USY&TCo. and DG for AT&SF	47.75
	Do	USY&TCo. and DG for Wab	14.00
	Do	USY&TCo. and DG for GT	.50
	Do	USY&TCo. and DG for NYC&StL	.75
	Do	USY&TCo. and DG for Penn	17.00
	Do	USY&TCo. and DG for CRI&P	371.50
	Do	USY&TCo. and DG for CB&Q	122.00
	Do	USY&TCo. and DG for CM&StP	288.75
	Do	USY&TCo. and DG for IC	384.25
	Do	USY&TCo. and AT&SF	2.75
	Do	USY&TCo. and CB&Q	18.00
	Do	USY&TCo. and CRI&P	28.25
	Do	USY&TCo. and IC	41.75
	Do	USY&TCo. and CM&StP	24.75
	Do	USY&TCo. and DG for C&NW	334.50
	Do	USY&TCo. and C&NW	65.75
	Ernest Clark and Louis Armbrecht copartners trading as Clark, Armbrecht & Company	USY&TCo. and CGW	18.50
	Do	USY&TCo. and DG for CGW	43.25
	Do	USY&TCo. and DG for NYC	1.25
	Do	USY&TCo. and DG for C&EI	3.00
353	Do	USY&TCo. and DG for AT&SF	3.25
	Do	USY&TCo. and DG for Wab	.50
	Do	USY&TCo. and DG for CRI&P	23.25
	Do	USY&TCo. and DG for CB&Q	5.25
	Do	USY&TCo. and DG for CM&StP	27.75
	Do	USY&TCo. and DG for IC	16.00
	Do	USY&TCo. and CB&Q	1.75
	Do	USY&TCo. and CRI&P	5.75
	Do	USY&TCo. and IC	.75
	Do	USY&TCo. and CM&StP	5.50
	Do	USY&TCo. and DG for C&NW	196.00
	Do	USY&TCo. and C&NW	24.25

Complainants	Defendants	Amount
E. A. Clark, trading as Clark, Bowles & Company	USY&TCo. and DG for C&A	.75
Do	USY&TCo. and DG for CGW	4.25
Do	USY&TCo. and PM	.25
Do	USY&TCo. and DG for PM	.25
Do	USY&TCo. and NYC	.75
Do	USY&TCo. and DG for NYC	.50
Do	USY&TCo. and Soo	1.00
Do	USY&TCo. and C&EI	1.50
Do	USY&TCo. and DG for C&EI	1.50
Do	USY&TCo. and DG for Soo	2.50
Do	USY&TCo. and DG for Wab	.50
Do	USY&TCo. and DG for CRI&P	14.50
Do	USY&TCo. and DG for CB&Q	9.00
Do	USY&TCo. and DG for CM&StP	6.75
Do	USY&TCo. and DG for IC	37.75
Do	USY&TCo. and CB&Q	.50
Do	USY&TCo. and CRI&P	1.25
Do	USY&TCo. and IC	3.00
Do	USY&TCo. and DG for C&NW	7.00
Do	USY&TCo. and C&NW	2.75
John Clay, John G. Forrest, C. A. Kleman, F. H. Connor and C. L. Robinson, copartners trading as Clay, Robinson & Company	USY&TCo. and DG for B&O	18.00
Do	USY&TCo. and CGW	16.50
Do	USY&TCo. and C&A	16.75
Do	USY&TCo. and DG for C&A	171.25
Do	USY&TCo. and DG for CGW	279.00
Do	USY&TCo. and DG for Erie	32.75
Do	USY&TCo. and PM	15.00
Do	USY&TCo. and DG for PM	84.50
Do	USY&TCo. and Erie	3.00
Do	USY&TCo. and Wab	12.00
Do	USY&TCo. and NYC	18.50
Do	USY&TCo. and DG for NYC	106.50
Do	USY&TCo. and CI&L	3.00
Do	USY&TCo. and DG for CI&L	70.50
Do	USY&TCo., PCC&StL and Penn	8.00
354 Do	USY&TCo. and DG for PCC&StL and Penn	79.00
Do	USY&TCo. and NYC&StL	1.75
Do	USY&TCo. and GT	11.25
Do	USY&TCo. and Penn	10.00
Do	USY&TCo. and Soo	183.25
Do	USY&TCo. and MC	21.25
Do	USY&TCo. and C&EI	22.25
Do	USY&TCo. and DG for C&EI	212.75
Do	USY&TCo. and DG for MC	39.50
Do	USY&TCo. and DG for Soo	455.75
Do	USY&TCo. and DG for AT&SF	291.50
Do	USY&TCo. and DG for Wab	160.00
Do	USY&TCo. and DG for GT	70.50
Do	USY&TCo. and DG for NYC&StL	23.50
Do	USY&TCo. and DG for Penn	56.00
Do	USY&TCo. and DG for CRI&P	761.50
Do	USY&TCo. and DG for CB&Q	2042.25

Complainants	Defendants	Amount
Do	USY&TCo. and DG for CM&StP	1789.50
Do	USY&TCo. and DG for IC	456.75
Do	USY&TCo. and AT&SF	35.25
Do	USY&TCo. and CB&Q	637.00
Do	USY&TCo. and CRI&P	112.50
Do	USY&TCo. and IC	24.00
Do	USY&TCo. and CM&StP	405.50
Do	USY&TCo. and DG for C&NW	1929.75
Do	USY&TCo. and C&NW	306.50
James R. Clegg, trading as James R. Clegg & Company	USY&TCo. and CGW	1.50
Do	USY&TCo. and DG for C&A	1.50
Do	USY&TCo. and DG for CGW	17.00
Do	USY&TCo. and PM	2.50
Do	USY&TCo. and DG for PM	21.00
Do	USY&TCo. and NYC	.75
Do	USY&TCo. and DG for NYC	5.75
Do	USY&TCo. and DG for CI&L	.75
Do	USY&TCo. and DG for PCC&StL and Penn	1.25
Do	USY&TCo. and MC	1.25
Do	USY&TCo. and C&EI	1.25
Do	USY&TCo. and DG for C&EI	13.00
Do	USY&TCo. and DG for MC	6.00
Do	USY&TCo. and DG for Soo	7.50
Do	USY&TCo. and DG for AT&SF	28.00
Do	USY&TCo. and DG for Wab	2.75
Do	USY&TCo. and DG for Penn	1.75
Do	USY&TCo. and DG for CRI&P	52.25
Do	USY&TCo. and DG for CB&Q	46.00
Do	USY&TCo. and DG for CM&StP	46.75
Do	USY&TCo. and DG for IC	36.75
Do	USY&TCo. and CB&Q	1.50
Do	USY&TCo. and CRI&P	4.75
Do	USY&TCo. and IC	3.50
Do	USY&TCo. and CM&StP	11.75
Do	USY&TCo. and DG for C&NW	97.75
Do	USY&TCo. and C&NW	3.25
355 A. M. Henneberry and N. W. Cochran, copartners, trading as Cochran & Henneberry	USY&TCo. and DG for B&O	$ 16.75
Do	USY&TCo. and CGW	38.25
Do	USY&TCo. and DG for C&A	33.75
Do	USY&TCo. and DG for CGW	155.25
Do	USY&TCo. and DG for Erie	3.25
Do	USY&TCo. and PM	.25
Do	USY&TCo. and Erie	1.75
Do	USY&TCo. and WAB	.50
Do	USY&TCo. and DG for PM	17.25
Do	USY&TCo. and NYC	2.25
Do	USY&TCo. and DG for NYC	19.25
Do	USY&TCo. and DG for CI&L	1.75
Do	USY&TCo. and DG for PCC&StL and Penn	4.75
Do	USY&TCo. and NYC&StL	.25
Do	USY&TCo. and GT	3.50
Do	USY&TCo. and Penn	1.25
Do	USY&TCo. and Soo	1.50

	Complainants	Defendants	Amount
	Do	USY&TCo. and MC	.50
	Do	USY&TCo. and C&EI	.75
	Do	USY&TCo. and DG for C&EI	44.25
	Do	USY&TCo. and DG for MC	2.25
	Do	USY&TCo. and DG for Soo	7.50
	Do	USY&TCo. and DG for AT&SF	148.75
	Do	USY&TCo. and DG for WAB	107.50
	Do	USY&TCo. and C&NW	157.25
	Do	USY&TCo. and DG for GT	16.00
	Do	USY&TCo. and DG for NYC&StL	1.50
	Do	USY&TCo. and DG for Penn	9.50
	Do	USY&TCo. and DG for CRI&P	337.25
	Do	USY&TCo. and DG for CB&Q	492.00
	Do	USY&TCo. and DG for CM&StP	603.50
	Do	USY&TCo. and DG for IC	208.75
	Do	USY&TCo. and AT&SF	21.50
	Do	USY&TCo. and CB&Q	104.75
	Do	USY&TCo. and CRI&P	64.25
	Do	USY&TCo. and IC	30.00
	Do	USY&TCo. and CM&StP	138.25
	Do	USY&TCo. and DG for C&NW	626.00
	W. P. Collings, trading as W. P. Collings & Son	USY&TCo. and DG for Erie	.50
	Do	USY&TCo. and DG for PM	.25
	Do	USY&TCo. and NYC	1.75
	Do	USY&TCo. and DG for NYC	20.50
	Do	USY&TCo. and CI&L	1.50
	Do	USY&TCo. and DG for PCC&StL and Penn	8.50
	Do	USY&TCo. and NYC&StL	.75
	Do	USY&TCo. and Penn	.50
	Do	USY&TCo. and Soo	2.50
	Do	USY&TCo. and DG for C&EI	14.75
	Do	USY&TCo. and DG for MC	1.50
	Do	USY&TCo. and DG for Soo	.25
	Do	USY&TCo. and DG for AT&SF	3.00
	Do	USY&TCo. and DG for WAB	.75
	Do	USY&TCo. and DG for GT	3.50
356	Do	USY&TCo. and DG for CI&L	$ 9.25
	Do	USY&TCo. and DG for NYC&StL	3.25
	Do	USY&TCo. and DG for Penn	1.50
	Do	USY&TCo. and DG for CRI&P	7.75
	Do	USY&TCo. and DG for CB&Q	5.25
	Do	USY&TCo. and DG for CM&StP	1.50
	Do	USY&TCo. and CB&Q	1.00
	Do	USY&TCo. and CRI&P	.25
	Do	USY&TCo. and DG for C&NW	6.00
	Do	USY&TCo. and C&NW	.50
	Conklin Bros. Commission Company	USY&TCo. and DG for B&O	.50
	Do	USY&TCo. and CGW	4.25
	Do	USY&TCo. and DG for C&A	2.25
	Do	USY&TCo. and DG for CGW	22.00
	Do	USY&TCo. and DG for Erie	.25
	Do	USY&TCo. and DG for PM	2.25
	Do	USY&TCo. and NYC	1.50
	Do	USY&TCo. and DG for NYC	7.00
	Do	USY&TCo. and DG for PCC&StL and Penn	1.25
	Do	USY&TCo. and Penn	.25

	Complainants	Defendants	Amount
	Do	USY&TCo. and Soo	3.50
	Do	USY&TCo. and DG for C&EI	2.50
	Do	USY&TCo. and DG for MC	.25
	Do	USY&TCo. and DG for Soo	38.50
	Do	USY&TCo. and DG for AT&SF	32.50
	Do	USY&TCo. and DG for WAB	41.00
	Do	USY&TCo. and DG for GT	.50
	Do	USY&TCo. and DG for CI&L	.75
	Do	USY&TCo. and DG for NYC&StL	.25
	Do	USY&TCo. and DG for Penn	4.00
	Do	USY&TCo. and DG for CRI&P	102.00
	Do	USY&TCo. and DG for CB&Q	487.25
	Do	USY&TCo. and DG for CM&StP	183.00
	Do	USY&TCo. and DG for IC	120.25
	Do	USY&TCo. and AT&SF	.25
	Do	USY&TCo. and CB&Q	14.00
	Do	USY&TCo. and CRI&P	14.50
	Do	USY&TCo. and IC	7.00
	Do	USY&TCo. and CM&StP	27.75
	Do	USY&TCo. and DG for C&NW	486.00
	Do	USY&TCo. and C&NW	73.25
	H. D. Copeland & Company	USY&TCo. and DG for B&O	3.75
	Do	USY&TCo. and CGW	19.00
	Do	USY&TCo. and C&A	1.00
	Do	USY&TCo. and DG for C&A	10.75
	Do	USY&TCo. and DG for CGW	86.00
	Do	USY&TCo. and DG for Erie	20.75
	Do	USY&TCo. and PM	2.50
	Do	USY&TCo. and Erie	.25
	Do	USY&TCo. and DG for PM	9.25
	Do	USY&TCo. and NYC	3.75
	Do	USY&TCo. and DG for NYC	34.00
	Do	USY&TCo. and CI&L	1.00
	Do	USY&TCo., PCC&StL and Penn	1.75
	Do	USY&TCo. and DG for PCC&StL and Penn	46.25
357	Do	USY&TCo. and NYC&StL	$ 7.25
	Do	USY&TCo. and GT	1.00
	Do	USY&TCo. and Penn	1.00
	Do	USY&TCo. and Soo	1.00
	Do	USY&TCo. and MC	2.25
	Do	USY&TCo. and C&EI	1.25
	Do	USY&TCo. and DG for C&EI	27.25
	Do	USY&TCo. and DG for MC	2.50
	Do	USY&TCo. and DG for Soo	14.00
	Do	USY&TCo. and DG for AT&SF	21.75
	Do	USY&TCo. and DG for WAB	36.50
	Do	USY&TCo. and DG for GT	7.25
	Do	USY&TCo. and DG for CI&L	35.00
	Do	USY&TCo. and DG for NYC&StL	38.00
	Do	USY&TCo. and DG for Penn	12.75
	Do	USY&TCo. and DG for CRI&P	331.00
	Do	USY&TCo. and DG for CB&Q	162.50
	Do	USY&TCo. and DG for CM&StP	487.75
	Do	USY&TCo. and DG for IC	206.00
	Do	USY&TCo. and AT&SF	.50
	Do	USY&TCo. and CB&Q	41.00
	Do	USY&TCo. and CRI&P	40.50

Complainants	Defendants	Amount
Do	USY&TCo. and IC	9.25
Do	USY&TCo. and CM&StP	69.00
Do	USY&TCo. and DG for C&NW	430.50
Do	USY&TCo. and C&NW	61.75
J. M. Corrick	USY&TCo. and C&A	1.25
Do	USY&TCo. and DG for CGW	.50
Do	USY&TCo. and DG for Penn	.25
Do	USY&TCo. and DG for CRI&P	48.25
Do	USY&TCo. and DG for CB&Q	185.25
Do	USY&TCo. and DG for CM&StP	30.75
Do	USY&TCo. and CB&Q	58.75
Do	USY&TCo. and CRI&P	11.50
Do	USY&TCo. and CM&StP	5.00
Do	USY&TCo. and DG for C&NW	63.00
Do	USY&TCo. and C&NW	13.25
J. F. Cross and H. G. Sommers, copartners trading as Cross, Sommers & Company	USY&TCo. and CGW	3.50
Do	USY&TCo. and C&A	1.00
Do	USY&TCo. and DG for C&A	35.75
Do	USY&TCo. and DG for CGW	20.25
Do	USY&TCo. and DG for Erie	.50
Do	USY&TCo. and DG for PM	.25
Do	USY&TCo. and DG for NYC	2.00
Do	USY&TCo. and DG for PCC&StL and Penn	.50
Do	USY&TCo. and Soo	1.00
Do	USY&TCo. and C&EI	.25
Do	USY&TCo. and DG for C&EI	15.75
Do	USY&TCo. and DG for Soo	5.50
Do	USY&TCo. and DG for AT&SF	8.25
Do	USY&TCo. and DG for WAB	20.75
Do	USY&TCo. and DG for GT	1.50
Do	USY&TCo. and DG for CI&L	35.50
358 Do	USY&TCo. and DG for NYC&StL	$ .50
Do	USY&TCo. and DG for Penn	1.25
Do	USY&TCo. and DG for CRI&P	106.25
Do	USY&TCo. and DG for CB&Q	155.75
Do	USY&TCo. and DG for CM&StP	147.75
Do	USY&TCo. and DG for IC	81.00
Do	USY&TCo. and AT&SF	.75
Do	USY&TCo. and CB&Q	11.25
Do	USY&TCo. and CRI&P	22.00
Do	USY&TCo. and IC	3.50
Do	USY&TCo. and CM&StP	29.50
Do	USY&TCo. and DG for C&NW	148.75
Do	USY&TCo. and C&NW	25.75
A. B. Daniels	USY&TCo. and DG for B&O	.25
Do	USY&TCo. and CGW	2.75
Do	USY&TCo. and DG for C&A	1.75
Do	USY&TCo. and DG for CGW	5.75
Do	USY&TCo. and DG for Erie	.25
Do	USY&TCo. and DG for PCC&StL and Penn	.75
Do	USY&TCo. and GT	1.00
Do	USY&TCo. and DG for C&EI	1.00
Do	USY&TCo. and DG for Soo	4.75
Do	USY&TCo. and DG for AT&SF	12.75

Complainants	Defendants	Amount
Do	USY&TCo. and DG for Wab	1.50
Do	USY&TCo. and DG for GT	1.25
Do	USY&TCo. and DG for CI&L	2.00
Do	USY&TCo. and DG for Penn	.50
Do	USY&TCo. and DG for CRI&P	59.25
Do	USY&TCo. and DG for CB&Q	46.00
Do	USY&TCo. and DG for CM&StP	35.75
Do	USY&TCo. and DG for IC	93.50
Do	USY&TCo. and CRI&P	14.75
Do	USY&TCo. and IC	15.75
Do	USY&TCo. and CM&StP	2.00
Do	USY&TCo. and DG for C&NW	59.75
Do	USY&TCo. and C&NW	13.00
P. T. Dolan and Fred Ludeman, copartners trading as Dolan & Ludeman	USY&TCo. and DG for CGW	3.00
Do	USY&TCo. and DG for Wab	4.00
Do	USY&TCo. and DG for CRI&P	40.00
Do	USY&TCo. and DG for CB&Q	11.75
Do	USY&TCo. and DG for CM&StP	22.00
Do	USY&TCo. and DG for IC	4.25
359 J. M. Doud & Company	USY&TCo. and CGW	$27.25
Do	USY&TCo. and C&A	1.00
Do	USY&TCo. and DG for C&A	42.75
Do	USY&TCo. and DG for CGW	123.00
Do	USY&TCo. and DG for Erie	1.00
Do	USY&TCo. and PM	1.00
Do	USY&TCo. and Wab	1.00
Do	USY&TCo. and DG for PM	16.50
Do	USY&TCo. and DG for NYC	2.50
Do	USY&TCo. and PCC&StL and Penn	.25
Do	USY&TCo. and DG for PCC&StL and Penn	16.50
Do	USY&TCo. and Penn	.50
Do	USY&TCo. and Soo	.25
Do	USY&TCo. and C&EI	1.00
Do	USY&TCo. and DG for C&EI	69.00
Do	USY&TCo. and DG for MC	14.25
Do	USY&TCo. and DG for Soo	10.50
Do	USY&TCo. and DG for AT&SF	88.75
Do	USY&TCo. and DG for Wab	57.60
Do	USY&TCo. and DG for GT	2.75
Do	USY&TCo. and DG for CI&L	3.50
Do	USY&TCo. and DG for Penn	4.75
Do	USY&TCo. and DG for CRI&P	220.75
Do	USY&TCo. and DG for CB&Q	149.75
Do	USY&TCo. and DG for CM&StP	517.50
Do	USY&TCo. and DG for IC	67.50
Do	USY&TCo. and DG for C&NW	470.50
Do	USY&TCo. and C&NW	132.50
Do	USY&TCo. and AT&SF	1.25
Do	USY&TCo. and CB&Q	8.00
Do	USY&TCo. and CRI&P	15.75
Do	USY&TCo. and IC	5.00
Do	USY&TCo. and CM&StP	50.00

Complainants	Defendants	Amount
S. S. Driver, trading as S. S. Driver & Company	USY&TCo. and DG for C&EI	1.25
Do	USY&TCo. and DG for AT&SF	1.00
Do	USY&TCo. and DG for Wab	.25
Do	USY&TCo. and DG for CM&StP	94.00
Do	USY&TCo. and DG for IC	50.25
Do	USY&TCo. and AT&SF	2.00
Do	USY&TCo. and CB&Q	.25
Do	USY&TCo. and IC	4.75
Do	USY&TCo. and CM&StP	54.50
Do	USY&TCo. and DG for C&NW	2.50
Do	USY&TCo. and C&NW	8.00
Chas. R. Beason and P. E. Moore, copartners trading as Drovers Commission Company.	USY&TCo. and DG for B&O	.75
Do	USY&TCo. and C&A	.25
Do	USY&TCo. and DG for C&A	44.00
Do	USY&TCo. and DG for CGW	4.00
Do	USY&TCo. and DG for Erie	4.50
Do	USY&TCo. and PM	.25
Do	USY&TCo. and PM	.75
Do	USY&TCo. and Wab	.25
Do	USY&TCo. and DG for PM	6.50
Do	USY&TCo. and NYC	4.75
Do	USY&TCo. and DG for NYC	13.75
360 Do	USY&TCo. and CI&L	$ .75
Do	USY&TCo. and PCC&StL and Penn	3.00
Do	USY&TCo. and DG for PCC&St.L and Penn	51.25
Do	USY&TCo. and Penn	3.00
Do	USY&TCo. and Soo	1.75
Do	USY&TCo. and MC	3.75
Do	USY&TCo. and DG for C&EI	16.00
Do	USY&TCo. and DG for MC	7.50
Do	USY&TCo. and DG for Soo	6.00
Do	USY&TCo. and DG for AT&SF	23.25
Do	USY&TCo. and DG for Wab	441.75
Do	USY&TCo. and DG for C&NW	362.50
Do	USY&TCo. and C&NW	83.25
Do	USY&TCo. and DG for GT	3.00
Do	USY&TCo. and DG for CI&L	43.50
Do	USY&TCo. and DG for NYC&StL	2.00
Do	USY&TCo. and DG for Penn	21.50
Do	USY&TCo. and DG for CRI&P	121.00
Do	USY&TCo. and DG for CB&Q	304.50
Do	USY&TCo. and DG for CM&StP	74.00
Do	USY&TCo. and DG for IC	30.00
Do	USY&TCo. and AT&SF	2.50
Do	USY&TCo. and CB&Q	37.75
Do	USY&TCo. and CRI&P	5.75
Do	USY&TCo. and IC	2.50
Do	USY&TCo. and CM&StP	12.75
J. W. Eastland, trading as J. W. Eastland & Company	USY&TCo. and DG for B&O	1.00
Do	USY&TCo. and CGW	24.50
Do	USY&TCo. and C&A	13.00
Do	USY&TCo. and DG for C&A	8.25

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for CGW	148.50
	Do	USY&TCo. and DG for Erie	.25
	Do	USY&TCo. and PM	.75
	Do	USY&TCo. and Wab	.25
	Do	USY&TCo. and DG for PM	3.75
	Do	USY&TCo. and NYC	3.50
	Do	USY&TCo. and DG for NYC	21.00
	Do	USY&TCo. and PCC&StL and Penn	2.75
	Do	USY&TCo. and DG for PCC&StL and Penn	12.00
	Do	USY&TCo. and GT	.50
	Do	USY&TCo. and Penn	1.00
	Do	USY&TCo. and Soo	82.25
	Do	USY&TCo. and MC	26.75
	Do	USY&TCo. and C&EI	2.00
	Do	USY&TCo. and DG for C&EI	57.75
	Do	USY&TCo. and DG for MC	124.00
	Do	USY&TCo. and DG for Soo	147.75
	Do	USY&TCo. and DG for AT&SF	121.00
	Do	USY&TCo. and DG for Wab	57.00
	Do	USY&TCo. and DG for C&NW	933.75
	Do	USY&TCo. and C&NW	173.00
361	Do	USY&TCo. and DG for GT	$ 13.00
	Do	USY&TCo. and DG for CI&L	10.75
	Do	USY&TCo. and DG for NYC&StL	22.25
	Do	USY&TCo. and DG for Penn	4.50
	Do	USY&TCo. and DG for CRI&P	426.25
	Do	USY&TCo. and DG for CB&Q	579.25
	Do	USY&TCo. and DG for CM&StP	944.50
	Do	USY&TCo. and DG for IC	210.50
	Do	USY&TCo. and AT&SF	19.75
	Do	USY&TCo. and CB&Q	215.25
	Do	USY&TCo. and CRI&P	76.50
	Do	USY&TCo. and IC	14.25
	Do	USY&TCo. and CM&StP	226.50
	Guy Wheeler and T. K. Polley, copartners, trading as Emmett, Wheeler & Polley	USY&TCo. and DG for B&O	.25
	Do	USY&TCo. and CGW	48.50
	Do	USY&TCo. and DG for C&A	16.75
	Do	USY&TCo. and DG for CGW	261.50
	Do	USY&TCo. and WAB	.25
	Do	USY&TCo. and DG for PM	.25
	Do	USY&TCo. and DG for PCC&StL and Penn	1.00
	Do	USY&TCo. and DG for C&EI	8.00
	Do	USY&TCo. and DG for Soo	.25
	Do	USY&TCo. and DG for AT&SF	4.50
	Do	USY&TCo. and DG for NYC	1.25
	Do	USY&TCo. and DG for WAB	1.25
	Do	USY&TCo. and DG for GT	1.25
	Do	USY&TCo. and DG for CI&L	.50
	Do	USY&TCo. and DG for CRI&P	191.50
	Do	USY&TCo. and DG for CB&Q	61.75
	Do	USY&TCo. and DG for CM&StP	81.50
	Do	USY&TCo. and DG for IC	1.75
	Do	USY&TCo. and AT&SF	9.50
	Do	USY&TCo. and CB&Q	9.75
	Do	USY&TCo. and CRI&P	47.50
	Do	USY&TCo. and IC	.75

Complainants	Defendants	Amount
Do	USY&TCo. and CM&StP	2.00
Do	USY&TCo. and DG for C&NW	238.25
Do	USY&TCo. and C&NW	26.75
E. H. Kuenster, surviving partner of copartnership of Erwin & Kuenster	USY&TCo. and C&GW	11.00
Do	USY&TCo. and C&A	1.75
Do	USY&TCo. and NYC	.75
Do	USY&TCo. and Penn	.25
Do	USY&TCo. and DG for C&EI	.25
Do	USY&TCo. and AT&SF	6.25
Do	USY&TCo. and CB&Q	54.00
Do	USY&TCo. and CRI&P	61.00
Do	USY&TCo. and IC	20.50
Do	USY&TCo. and CM&StP	50.50
Do	USY&TCo. and DG for C&NW	4.75
Do	USY&TCo. and C&NW	102.75
362 Evans, Snider Buel Company	USY&TCo. and DG for B&O	$11.75
Do	USY&TCo. and C&GW	1.75
Do	USY&TCo. and C&A	1.50
Do	USY&TCo. and DG for C&A	34.75
Do	USY&TCo. and DG for Erie	3.00
Do	USY&TCo. and PM	1.00
Do	USY&TCo. and DG for PM	.50
Do	USY&TCo. and DG for CGW	41.00
Do	USY&TCo. and NYC	1.00
Do	USY&TCo. and DG for PCC&StL and Penn	2.25
Do	USY&TCo. and NYC&StL	.25
Do	USY&TCo. and GT	.75
Do	USY&TCo. and Soo	5.50
Do	USY&TCo. and C&EI	.50
Do	USY&TCo. and DG for C&EI	24.75
Do	USY&TCo. and DG for MC	.75
Do	USY&TCo. and DG for Soo	34.50
Do	USY&TCo. and DG for AT&SF	49.25
Do	USY&TCo. and DG for NYC	3.25
Do	USY&TCo. and DG for WAB	42.50
Do	USY&TCo. and DG for GT	7.00
Do	USY&TCo. and DG for CI&L	6.25
Do	USY&TCo. and DG for NYC&StL	1.25
Do	USY&TCo. and DG for Penn	3.00
Do	USY&TCo. and DG for CRI&P	410.00
Do	USY&TCo. and DG for CB&Q	380.00
Do	USY&TCo. and DG for CM&StP	204.50
Do	USY&TCo. and DG for IC	25.75
Do	USY&TCo. and DG for C&NW	163.75
Do	USY&TCo. and C&NW	23.50
Do	USY&TCo. and AT&SF	.75
Do	USY&TCo. and CB&Q	95.50
Do	USY&TCo. and CRI&P	52.50
Do	USY&TCo. and IC	3.25
Do	USY&TCo. and CM&StP	42.75
Filler, Wilson & McClelland	USY&TCo. and DG for B&O	.50
Do	USY&TCo. and C&GW	5.50
Do	USY&TCo. and C&A	1.75
Do	USY&TCo. and DG for C&A	32.75

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for Erie	.25
	Do	USY&TCo. and PM	1.25
	Do	USY&TCo. and WAB	.25
	Do	USY&TCo. and DG for PM	9.00
	Do	USY&TCo. and DG for CGW	18.00
	Do	USY&TCo. and DG for PCC&StL and Penn	.50
	Do	USY&TCo. and Penn	.25
	Do	USY&TCo. and Soo	30.50
	Do	USY&TCo. and DG for C&EI	6.00
	Do	USY&TCo. and DG for Soo	76.50
	Do	USY&TCo. and DG for AT&SF	43.25
	Do	USY&TCo. and DG for NYC	1.75
	Do	USY&TCo. and DG for WAB	3.25
	Do	USY&TCo. and DG for GT	.25
	Do	USY&TCo. and DG for CI&L	.50
	Do	USY&TCo. and DG for NYC&StL	.50
	Do	USY&TCo. and DG for Penn	.75
	Do	USY&TCo. and DG for CRI&P	71.00
	Do	USY&TCo. and DG for CB&Q	166.50
	Do	USY&TCo. and DG for CM&StP	377.50
	Do	USY&TCo. and DG for IC	90.75
	Do	USY&TCo. and DG for C&NW	324.75
	Do	USY&TCo. and C&NW	116.50
363	Do	USY&TCo. and AT&SF	$ 1.00
	Do	USY&TCo. and CB&Q	9.75
	Do	USY&TCo. and CRI&P	3.00
	Do	USY&TCo. and IC	3.50
	Do	USY&TCo. and CM&StP	116.75
	O. O. Freeland and C. M. Godfrey, copartners, trading as Freeland & Godfrey	USY&TCo. and C&GW	6.75
	Do	USY&TCo. and DG for C&A	2.50
	Do	USY&TCo. and PM	.25
	Do	USY&TCo. and DG for PM	.25
	Do	USY&TCo. and DG for CGW	28.75
	Do	USY&TCo. and NYC	1.00
	Do	USY&TCo. and DG for PCC&StL and Penn	.50
	Do	USY&TCo. and GT	.75
	Do	USY&TCo. and Soo	17.25
	Do	USY&TCo. and MC	3.00
	Do	USY&TCo. and DG for C&EI	.25
	Do	USY&TCo. and DG for MC	3.50
	Do	USY&TCo. and DG for Soo	28.00
	Do	USY&TCo. and DG for AT&SF	1.50
	Do	USY&TCo. and DG for NYC	1.50
	Do	USY&TCo. and DG for WAB	15.75
	Do	USY&TCo. and DG for GT	3.75
	Do	USY&TCo. and DG for NYC&StL	.50
	Do	USY&TCo. and DG for Penn	.75
	Do	USY&TCo. and DG for CRI&P	327.50
	Do	USY&TCo. and DG for CB&Q	99.00
	Do	USY&TCo. and DG for CM&StP	162.00
	Do	USY&TCo. and DG for IC	83.50
	Do	USY&TCo. and CB&Q	23.25
	Do	USY&TCo. and CRI&P	13.50
	Do	USY&TCo. and IC	11.25
	Do	USY&TCo. and CM&StP	15.75
	Do	USY&TCo. and DG for C&NW	254.75
	Do	USY&TCo. and C&NW	37.25

Complainants	Defendants	Amount
Fred Freeman, trading as Fred Freeman & Company	USY&TCo. and DG for B&O	.50
Do	USY&TCo. and C&GW	2.75
Do	USY&TCo. and C&A	.25
Do	USY&TCo. and DG for Erie	.25
Do	USY&TCo. and Erie	.50
Do	USY&TCo. and DG for CGW	2.00
Do	USY&TCo. and Penn	.25
Do	USY&TCo. and Soo	1.25
Do	USY&TCo. and DG for C&EI	3.50
Do	USY&TCo. and DG for Soo	1.00
Do	USY&TCo. and DG for AT&SF	.75
Do	USY&TCo. and DG for WAB	.50
Do	USY&TCo. and DG for NYC&StL	1.25
Do	USY&TCo. and DG for CRI&P	81.00
Do	USY&TCo. and DG for CB&Q	12.00
Do	USY&TCo. and DG for CM&StP	16.75
Do	USY&TCo. and DG for IC	8.00
Do	USY&TCo. and CB&Q	4.25
Do	USY&TCo. and CRI&P	8.00
Do	USY&TCo. and CM&StP	6.50
Do	USY&TCo. and DG for C&NW	35.75
Do	USY&TCo. and C&NW	14.75
364 P. J. Fitzgerald and G. S. Freeman, copartners trading as Freeman, Fitzgerald & Company	USY&TCo. and DG for B&O	$1.50
Do	USY&TCo. and C&GW	2.25
Do	USY&TCo. and C&A	1.00
Do	USY&TCo. and DG for C&A	48.00
Do	USY&TCo. and DG for Erie	.50
Do	USY&TCo. and PM	.25
Do	USY&TCo. and WAB	.25
Do	USY&TCo. and DG for PM	.25
Do	USY&TCo. and DG for CGW	52.75
Do	USY&TCo. and DG for PCC&StL and Penn	3.75
Do	USY&TCo. and Penn	.50
Do	USY&TCo. and MC	2.00
Do	USY&TCo. and C&EI	.50
Do	USY&TCo. and DG for C&EI	22.75
Do	USY&TCo. and DG for MC	5.00
Do	USY&TCo. and DG for Soo	3.75
Do	USY&TCo. and DG for AT&SF	16.25
Do	USY&TCo. and DG for NYC	5.25
Do	USY&TCo. and DG for WAB	19.50
Do	USY&TCo. and DG for GT	.50
Do	USY&TCo. and DG for CI&L	9.50
Do	USY&TCo. and DG for NYC&StL	1.50
Do	USY&TCo. and DG for Penn	7.50
Do	USY&TCo. and DG for CRI&P	33.75
Do	USY&TCo. and DG for CB&Q	105.75
Do	USY&TCo. and DG for CM&StP	194.24
Do	USY&TCo. and DG for IC	88.50
Do	USY&TCo. and DG for C&NW	155.25
Do	USY&TCo. and C&NW	9.50
Do	USY&TCo. and CB&Q	5.00
Do	USY&TCo. and CRI&P	.50
Do	USY&TCo. and IC	.50
Do	USY&TCo. and CM&StP	51.00

Complainants	Defendants	Amount
Wm. Gentleman, A. M. Gentleman, C. F. Gentleman and J. G. Gentleman, copartners trading as Wm. Gentleman & Sons	USY&TCo. and DG for B&O	.75
Do	USY&TCo. and C&GW	7.75
Do	USY&TCo. and DG for C&GW	71.50
Do	USY&TCo. and DG for Erie	11.00
Do	USY&TCo. and Erie	.25
Do	USY&TCo. and DG for PM	3.50
Do	USY&TCo. and DG for CGW	135.75
Do	USY&TCo. and NYC	.50
Do	USY&TCo., PCC&StL and Penn	.50
Do	USY&TCo. and DG for PCC&StL and Penn	46.25
Do	USY&TCo. and NYC&StL	.25
Do	USY&TCo. and Penn	1.25
Do	USY&TCo. and DG for C&EI	1.25
Do	USY&TCo. and DG for MC	.25
Do	USY&TCo. and DG for Soo	6.50
Do	USY&TCo. and DG for AT&SF	9.00
Do	USY&TCo. and DG for NYC	6.00
Do	USY&TCo. and DG for WAB	3.75
Do	USY&TCo. and DG for GT	1.00
Do	USY&TCo. and DG for CI&L	8.75
Do	USY&TCo. and DG for NYC&StL	6.50
Do	USY&TCo. and DG for Penn	6.50
Do	USY&TCo. and DG for CRI&P	171.25
Do	USY&TCo. and DG for CB&Q	210.25
Do	USY&TCo. and DG for CM&StP	339.00
Do	USY&TCo. and DG for IC	89.50
Do	USY&TCo. and DG for C&NW	675.00
Do	USY&TCo. and C&NW	61.00
Do	USY&TCo. and AT&SF	.50
Do	USY&TCo. and CB&Q	6.75
Do	USY&TCo. and CRI&P	23.25
Do	USY&TCo. and IC	3.25
Do	USY&TCo. and CM&StP	28.25
365 S. G. Gillogly, R. E. Gillogly, F. G. Gillogly and F. T. Gillogly, copartners trading as Gillogly & Company	USY&TCo. and DG for B&O	$1.00
Do	USY&TCo. and C&GW	1.25
Do	USY&TCo. and DG for C&A	10.75
Do	USY&TCo. and DG for Erie	26.25
Do	USY&TCo. and PM	.50
Do	USY&TCo. and Erie	.25
Do	USY&TCo. and WAB	.50
Do	USY&TCo. and DG for PM	3.00
Do	USY&TCo. and DG for CGW	17.00
Do	USY&TCo. and NYC	4.00
Do	USY&TCo. and CIL	2.25
Do	USY&TCo. and DG for PCC&StL and Penn	11.25
Do	USY&TCo. and Penn	.25
Do	USY&TCo. and Soo	.50
Do	USY&TCo. and C&EI	3.50
Do	USY&TCo. and DG for C&EI	162.75
Do	USY&TCo. and DG for Soo	1.00

Complainants	Defendants	Amount
Do	USY&TCo. and DG for AT&SF	2.75
Do	USY&TCo. and DG for NYC	55.75
Do	USY&TCo. and DG for WAB	25.75
Do	USY&TCo. and DG for GT	.25
Do	USY&TCo. and DG for CI&L	40.00
Do	USY&TCo. and DG for NYC&StL	11.25
Do	USY&TCo. and DG for Penn	6.00
Do	USY&TCo. and DG for CRI&P	24.00
Do	USY&TCo. and DG for CB&Q	88.25
Do	USY&TCo. and DG for CM&StP	171.00
Do	USY&TCo. and DG for IC	28.25
Do	USY&TCo. and CB&Q	1.00
Do	USY&TCo. and CRI&P	.25
Do	USY&TCo. and IC	3.00
Do	USY&TCo. and CM&StP	18.25
Do	USY&TCo. and DG for C&NW	231.00
Do	USY&TCo. and C&NW	46.25
Chas. E. Harding, trading as Chas. E. Harding & Company	USY&TCo. and DG for B&O	.50
Do	USY&TCo. and C&GW	6.25
Do	USY&TCo. and DG for C&A	10.00
Do	USY&TCo. and DG for Erie	.50
Do	USY&TCo. and DG for CGW	69.50
Do	USY&TCo. and NYC	.75
Do	USY&TCo., PCC&StL and Penn	.25
Do	USY&TCo. and Soo	29.75
Do	USY&TCo. and DG for C&EI	12.75
Do	USY&TCo. and DG for MC	.75
Do	USY&TCo. and DG for Soo	166.50
Do	USY&TCo. and DG for AT&SF	9.00
Do	USY&TCo. and DG for NYC	4.00
Do	USY&TCo. and DG for WAB	15.25
Do	USY&TCo. and DG for GT	8.50
Do	USY&TCo. and DG for CI&L	4.25
Do	USY&TCo. and DG for NYC&StL	1.25
Do	USY&TCo. and DG for Penn	2.25
Do	USY&TCo. and CRI&P	86.00
Do	USY&TCo. and DG for CB&Q	77.50
Do	USY&TCo. and DG for CM&StP	499.00
Do	USY&TCo. and DG for IC	227.25
Do	USY&TCo. and AT&SF	7.25
Do	USY&TCo. and CB&Q	1.00
Do	USY&TCo. and CRI&P	.50
Do	USY&TCo. and IC	33.50
Do	USY&TCo. and CM&StP	54.50
Do	USY&TCo. and C&NW	51.50
Do	USY&TCo. and DG for C&NW	401.25
366 Hefner Commission Company	USY&TCo. and CGW	$ 9.50
Do	USY&TCo. and DG for C&A	1.50
Do	USY&TCo. and DG for PM	.25
Do	USY&TCo. and DG for CGW	29.25
Do	USY&TCo. and NYC	.25
Do	USY&TCo. and CIL	.50
Do	USY&TCo. and DG for PCC&StL and Penn	1.00
Do	USY&TCo. and Soo	.50
Do	USY&TCo. and C&EI	2.75
Do	USY&TCo. and DG for C&EI	47.50

Complainants	Defendants	Amounts
Do	USY&TCo. and DG for MC	.25
Do	USY&TCo. and DG for Soo	.75
Do	USY&TCo. and DG for AT&SF	3.25
Do	USY&TCo. and DG for NYC	3.00
Do	USY&TCo. and DG for WAB	14.00
Do	USY&TCo. and DG for GT	.75
Do	USY&TCo. and DG for CI&L	29.25
Do	USY&TCo. and DG for Penn	.50
Do	USY&TCo. and DG for CRI&P	152.75
Do	USY&TCo. and DG for CB&Q	38.25
Do	USY&TCo. and DG for CM&StP	318.00
Do	USY&TCo. and DG for IC	124.75
Do	USY&TCo. and CB&Q	3.25
Do	USY&TCo. and CRI&P	15.50
Do	USY&TCo. and IC	5.25
Do	USY&TCo. and CM&StP	54.00
Do	USY&TCo. and DG for C&NW	179.25
Do	USY&TCo. and C&NW	33.00
Geo. F. Hogan, trading as Geo. F. Hogan & Company	USY&TCo. and DG for C&A	28.75
Do	USY&TCo. and DG for PM	.50
Do	USY&TCo. and DG for GT	.25
Do	USY&TCo. and DG for AT&SF	23.00
Do	USY&TCo. and DG for NYC	.25
Do	USY&TCo. and DG for Penn	.25
Do	USY&TCo. and DG for CRI&P	14.75
Do	USY&TCo. and DG for CB&Q	.50
Do	USY&TCo. and DG for CM&StP	.75
Do	USY&TCo. and CRI&P	2.00
A. Warheimer, E. H. Ingwerson, J. H. Ingwerson, Dan R. Ingwerson, D. C. Mosier, and A. C. Barroff, copartners trading as Ingwerson Bros.	USY&TCo. and CGW	2.75
Do	USY&TCo. and DG for C&A	7.25
Do	USY&TCo. and DG forCGW	16.25
Do	USY&TCo. and Soo	7.50
Do	USY&TCo. and C&EI	1.25
Do	USY&TCo. and DG for C&EI	2.75
Do	USY&TCo. and DG for Soo	15.00
Do	USY&TCo. and DG for WAB	1.00
Do	USY&TCo. and DG for CRI&P	64.50
Do	USY&TCo. and DG for CB&Q	24.25
Do	USY&TCo. and DG for CM&StP	341.75
Do	USY&TCo. and DG for IC	74.75
Do	USY&TCo. and CB&Q	6.25
Do	USY&TCo. and CRI&P	14.00
Do	USY&TCo. and IC	8.00
Do	USY&TCo. and CM&StP	44.50
Do	USY&TCo. and DG for C&NW	704.75
Do	USY&TCo. and C&NW	150.75
367 C. A. Ingwerson	USY&TCo. and Soo	$ 2.75
Do	USY&TCo. and DG for C&EI	.75
Do	USY&TCo. and DG for CRI&P	20.00
Do	USY&TCo. and DG for CM&StP	31.75
Do	USY&TCo. and CB&Q	.25

Complainants	Defendants	Amounts
Do	USY&TCo. and CRI&P	1.00
Do	USY&TCo. and IC	2.00
Do	USY&TCo. and CM&StP	11.50
Do	USY&TCo. and DG for C&NW	73.25
Do	USY&TCo. and C&NW	29.00
Iowa Livestock Commission Company	USY&TCo. and DG for B&O	.25
Do	USY&TCo. and C&GW	3.00
Do	USY&TCo. and C&A	1.25
Do	USY&TCo. and DG for C&A	114.00
Do	USY&TCo. and DG for Erie	1.25
Do	USY&TCo. and Erie	.50
Do	USY&TCo. and WAB	.50
Do	USY&TCo. and DG for PM	1.75
Do	USY&TCo. and DG for CGW	26.50
Do	USY&TCo. and NYC	.75
Do	USY&TCo. and CIL	.25
Do	USY&TCo. and DG for PCC&StL and Penn	.50
Do	USY&TCo. and Penn	.25
Do	USY&TCo. and C&EI	.25
Do	USY&TCo. and DG for C&EI	26.25
Do	USY&TCo. and DG for MC	1.50
Do	USY&TCo. and DG for Soo	4.25
Do	USY&TCo. and DG for AT&SF	168.75
Do	USY&TCo. and DG for NYC	26.25
Do	USY&TCo. and DG for WAB	94.50
Do	USY&TCo. and DG for GT	2.00
Do	USY&TCo. and DG for CI&L	10.25
Do	USY&TCo. and DG for NYC&StL	1.25
Do	USY&TCo. and DG for Penn	.25
Do	USY&TCo. and DG for CRI&P	100.25
Do	USY&TCo. and DG for CB&Q	206.25
Do	USY&TCo. and DG for CM&StP	122.50
Do	USY&TCo. and DG for IC	55.00
Do	USY&TCo. and AT&SF	1.75
Do	USY&TCo. and CB&Q	31.00
Do	USY&TCo. and CRI&P	20.50
Do	USY&TCo. and IC	10.25
Do	USY&TCo. and CM&StP	37.00
Do	USY&TCo. and DG for C&NW	104.00
Do	USY&TCo. and C&NW	23.50
I. W. Knettle and Edwin Knettle, copartners trading as Knettle Bros.	USY&TCo. and DG for B&O	.50
Do	USY&TCo. and C&GW	3.00
Do	USY&TCo. and DG for C&A	.50
Do	USY&TCo. and DG for CGW	28.75
Do	USY&TCo. and Soo	.50
Do	USY&TCo. and DG for CRI&P	3.50
Do	USY&TCo. and DG for C&NW	1.50
Do	USY&TCo. and C&NW	1.00
368 Knollen Sheep Commission Company	USY&TCo. and CGW	$ 3.00
Do	USY&TCo. and DG for C&A	2.00
Do	USY&TCo. and DG for Erie	1.25
Do	USY&TCo. and PM	1.25
Do	USY&TCo. and Erie	.50
Do	USY&TCo. and DG for PM	1.25

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for CGW	47.75
	Do	USY&TCo. and NYC	2.00
	Do	USY&TCo. and CI&L	1.50
	Do	USY&TCo. and DG for PCC&StL and Penn	4.25
	Do	USY&TCo. and GT	2.00
	Do	USY&TCo. and Penn	.25
	Do	USY&TCo. and Soo	25.25
	Do	USY&TCo. and MC	1.25
	Do	USY&TCo. and C&EI	3.00
	Do	USY&TCo. and DG for C&EI	9.25
	Do	USY&TCo. and DG for MC	1.00
	Do	USY&TCo. and DG for Soo	79.00
	Do	USY&TCo. and DG for AT&SF	34.50
	Do	USY&TCo. and DG for NYC	14.00
	Do	USY&TCo. and DG for WAB	9.00
	Do	USY&TCo. and DG for GT	6.75
	Do	USY&TCo. and DG for CI&L	15.00
	Do	USY&TCo. and DG for NYC&StL	2.25
	Do	USY&TCo. and DG for Penn	1.25
	Do	USY&TCo. and DG for CRI&P	40.50
	Do	USY&TCo. and DG for CB&Q	179.50
	Do	USY&TCo. and DG for CM&StP	371.00
	Do	USY&TCo. and DG for IC	18.50
	Do	USY&TCo. and CB&Q	35.75
	Do	USY&TCo. and CRI&P	2.50
	Do	USY&TCo. and IC	.50
	Do	USY&TCo. and CM&StP	153.25
	Do	USY&TCo. and DG for C&NW	343.75
	Do	USY&TCo. and C&NW	73.75
	E. H. Kuenster, trading as Kuenster Livestock Commission Company	USY&TCo. and DG for B&O	2.25
	Do	USY&TCo. and DG for C&A	18.50
	Do	USY&TCo. and DG for Erie	4.00
	Do	USY&TCo. and DG for PM	.25
	Do	USY&TCo. and DG for CGW	106.00
	Do	USY&TCo. and DG for C&EI	2.50
	Do	USY&TCo. and DG for MC	2.50
	Do	USY&TCo. and DG for Soo	6.25
	Do	USY&TCo. and DG for AT&SF	55.50
	Do	USY&TCo. and DG for NYC	7.00
	Do	USY&TCo. and DG for PCC&StL and Penn	2.50
	Do	USY&TCo. and DG for WAB	40.50
	Do	USY&TCo. and DG for GT	1.00
	Do	USY&TCo. and DG for CI&L	1.00
	Do	USY&TCo. and DG for NYC&StL	.25
	Do	USY&TCo. and DG for Penn	6.25
369	Do	USY&TCo. and DG for CRI&P	$ 364.25
	Do	USY&TCo. and DG for CB&Q	374.75
	Do	USY&TCo. and DG for CM&StP	240.50
	Do	USY&TCo. and DG for IC	128.75
	Do	USY&TCo. and DG for C&NW	566.00
	A. J. Laberthe	USY&TCo. and DG for B&O	3.00
	Do	USY&TCo. and DG for C&EI	11.50
	Do	USY&TCo. and DG for NYC	2.50
	Do	USY&TCo. and DG for WAB	1.50
	Do	USY&TCo. and DG for CRI&P	.75
	Do	USY&TCo. and DG for CB&Q	1.25
	Do	USY&TCo. and DG for CM&STP	6.75
	Do	USY&TCo. and DG for C&NW	27.25

	Complainants	Defendants	Amount
	L. S. Larrison, trading as L. S. Larrison & Company		
	Do	USY&TCo. and Soo	.25
	Do	USY&TCo. and DG for CRI&P	.25
	Do	USY&TCo. and CRI&P	.25
	Lee Livestock Commission Company	USY&TCo. and DG for B&O	1.25
	Do	USY&TCo. and C&GW	3.50
	Do	USY&TCo. and C&A	.50
	Do	USY&TCo. and DG for C&A	57.75
	Do	USY&TCo. and DG for Erie	3.00
	Do	USY&TCo. and PM	.25
	Do	USY&TCo. and WAB	.50
	Do	USY&TCo. and DG for PM	3.25
	Do	USY&TCo. and DG for CGW	69.75
	Do	USY&TCo. and NYC	4.50
	Do	USY&TCo. and CI&L	.75
	Do	USY&TCo. and DG for AT&SF	232.00
	Do	USY&TCo. and PCC&StL and Penn	2.00
	Do	USY&TCo. and Penn	4.75
	Do	USY&TCo. and DG for C&EI	5.25
	Do	USY&TCo. and DG for MC	2.50
	Do	USY&TCo. and DG for Soo	6.50
	Do	USY&TCo. and DG for NYC	16.50
	Do	USY&TCo. and DG for PCC&StL and Penn	13.50
	Do	USY&TCo. and DG for WAB	51.25
	Do	USY&TCo. and DG for GT	7.00
	Do	USY&TCo. and DG for CI&L	95.50
	Do	USY&TCo. and DG for NYC&StL	2.25
	Do	USY&TCo. and DG for Penn	2.75
	Do	USY&TCo. and DG for CRI&P	238.00
	Do	USY&TCo. and DG for CB&Q	713.50
	Do	USY&TCo. and DG for CM&StP	389.75
	Do	USY&TCo. and DG for IC	170.75
	Do	USY&TCo. and AT&SF	23.25
	Do	USY&TCo. and CB&Q	157.25
	Do	USY&TCo. and CRI&P	32.00
	Do	USY&TCo. and IC	18.25
	Do	USY&TCo. and CM&StP	67.25
	Do	USY&TCo. and DG for C&NW	581.75
	Do	USY&TCo. and C&NW	110.00
	F. C. Ludeman, trading as F. C. Ludeman & Company		
370	Do	USY&TCo. and DG for CGW	$1.00
	Do	USY&TCo. and DG for C&EI	1.25
	Do	USY&TCo. and DG for NYC	2.00
	Do	USY&TCo. and DG for NYC&StL	3.75
	Do	USY&TCo. and DG for CRI&P	131.00
	Do	USY&TCo. and DG for CB&Q	8.75
	Do	USY&TCo. and DG for CM&StP	38.00
	Do	USY&TCo. and CB&Q	4.75
	Do	USY&TCo. and CRI&P	18.25
	Do	USY&TCo. and CM&StP	15.50
	Do	USY&TCo. and DG for C&NW	38.25
	Do	USY&TCo. and C&NW	13.25
	McCausland Hoag & Vaughn	USY&TCo. and DG for B&O	23.00
	Do	USY&TCo. and C&GW	7.50

	Complainants	Defendants	Amounts
	Do	USY&TCo. and C&A	1.00
	Do	USY&TCo. and DG for C&A	171.25
	Do	USY&TCo. and DG for Erie	.25
	Do	USY&TCo. and PM	.50
	Do	USY&TCo. and WAB	.25
	Do	USY&TCo. and DG for PM	1.75
	Do	USY&TCo. and DG for CGW	48.75
	Do	USY&TCo. and NYC	1.50
	Do	USY&TCo. and DG for AT&SF	140.50
	Do	USY&TCo. and PCC&StL and Penn	.26
	Do	USY&TCo. and GT	4.25
	Do	USY&TCo. and Penn	.25
	Do	USY&TCo. and Soo	2.50
	Do	USY&TCo. and MC	4.25
	Do	USY&TCo. and C&EI	1.50
	Do	USY&TCo. and DG for C&EI	65.25
	Do	USY&TCo. and DG for MC	2.00
	Do	USY&TCo. and DG for Soo	2.25
	Do	USY&TCo. and DG for NYC	18.00
	Do	USY&TCo. and DG for PCC&StL and Penn	11.50
	Do	USY&TCo. and DG for WAB	96.25
	Do	USY&TCo. and DG for GT	14.50
	Do	USY&TCo. and DG for CI&L	38.50
	Do	USY&TCo. and DG for NYC&StL	6.25
	Do	USY&TCo. and DG for Penn	3.50
	Do	USY&TCo. and DG for CRI&P	369.50
	Do	USY&TCo. and DG for CB&Q	353.75
	Do	USY&TCo. and DG for CM&StP	304.50
	Do	USY&TCo. and DG for IC	336.75
	Do	USY&TCo. and AT&SF	10.00
	Do	USY&TCo. and CB&Q	39.25
	Do	USY&TCo. and CRI&P	45.50
	Do	USY&TCo. and IC	8.75
	Do	USY&TCo. and CM&StP	41.00
	Do	USY&TCo. and DG for C&NW	419.25
	Do	USY&TCo. and C&NW	82.25
371	Wm. Mahoney	USY&TCo. and CGW	$ 8.00
	Do	USY&TCo. and DG for C&A	2.50
	Do	USY&TCo. and PM	.50
	Do	USY&TCo. and DG for PM	.25
	Do	USY&TCo. and DG for CGW	21.00
	Do	USY&TCo. and NYC	1.00
	Do	USY&TCo. and Soo	1.50
	Do	USY&TCo. and MC	1.50
	Do	USY&TCo. and C&EI	3.50
	Do	USY&TCo. and DG for C&EI	.50
	Do	USY&TCo. and DG for MC	.50
	Do	USY&TCo. and DG for Soo	.75
	Do	USY&TCo. and DG for NYC	2.50
	Do	USY&TCo. and DG for WAB	.50
	Do	USY&TCo. and DG for Penn	.25
	Do	USY&TCo. and DG for CRI&P	102.00
	Do	USY&TCo. and DG for CB&Q	51.25
	Do	USY&TCo. and DG for CM&StP	79.00
	Do	USY&TCo. and DG for IC	20.50
	Do	USY&TCo. and CB&Q	7.25
	Do	USY&TCo. and CRI&P	26.75
	Do	USY&TCo. and IC	5.25

Complainants	Defendants	Amount
Do	USY&TCo. and CM&StP	53.50
Do	USY&TCo. and DG for C&NW	42.50
Do	USY&TCo. and C&NW	15.75
J. P. Maley and Harry L. Carpenter, copartners trading as Maley, Carpenter & Company	USY&TCo. and CGW	.75
Do	USY&TCo. and DG for C&A	.75
Do	USY&TCo. and DG for CGW	15.50
Do	USY&TCo. and DG for AT&SF	62.25
Do	USY&TCo. and MC	.25
Do	USY&TCo. and C&EI	.25
Do	USY&TCo. and DG for C&EI	1.00
Do	USY&TCo. and DG for MC	1.75
Do	USY&TCo. and DG for NYC	4.50
Do	USY&TCo. and DG for PCC&StL and Penn	3.50
Do	USY&TCo. and DG for GT	.50
Do	USY&TCo. and DG for Penn	3.25
Do	USY&TCo. and DG for CRI&P	82.50
Do	USY&TCo. and DG for CB&Q	385.50
Do	USY&TCo. and DG for CM&StP	33.75
Do	USY&TCo. and DG for IC	47.75
Do	USY&TCo. and CB&Q	26.50
Do	USY&TCo. and CRI&P	1.50
Do	USY&TCo. and IC	4.00
Do	USY&TCo. and CM&StP	3.50
Do	USY&TCo. and DG for C&NW	144.75
Do	USY&TCo. and C&NW	30.75
372 John P. Martin, James G. Martin, George E. Martin and Wm. S. Burmister, copartners trading as Martin Bros. & Company	USY&TCo. and DG for B&O	$ .25
Do	USY&TCo. and CGW	6.50
Do	USY&TCo. and DG for C&A	3.00
Do	USY&TCo. and DG for Erie	3.75
Do	USY&TCo. and PM	.75
Do	USY&TCo. and Erie	.75
Do	USY&TCo. and WAB	.50
Do	USY&TCo. and DG for PM	1.25
Do	USY&TCo. and DG for CGW	48.75
Do	USY&TCo. and NYC	.27
Do	USY&TCo. and DG for AT&SF	56.75
Do	USY&TCo. and GT	.25
Do	USY&TCo. and Soo	.50
Do	USY&TCo. and MC	.25
Do	USY&TCo. and DG for C&EI	19.75
Do	USY&TCo. and DG for MC	1.25
Do	USY&TCo. and DG for Soo	4.75
Do	USY&TCo. and DG for NYC	15.25
Do	USY&TCo. and DG for PCC&StL and Penn	1.75
Do	USY&TCo. and DG for WAB	1.25
Do	USY&TCo. and DG for CI&L	7.50
Do	USY&TCo. and DG for CRI&P	348.75
Do	USY&TCo. and DG for CB&Q	1206.75
Do	USY&TCo. and DG for CM&StP	212.25
Do	USY&TCo. and DG for IC	41.50
Do	USY&TCo. and DG for C&NW	310.50

Complainants	Defendants	Amount
Do	USY&TCo. and C&NW	53.00
Do	USY&TCo. and AT&SF	3.25
Do	USY&TCo. and CB&Q	161.00
Do	USY&TCo. and CRI&P	33.00
Do	USY&TCo. and IC	1.25
Do	USY&TCo. and CM&StP	57.50
373 Muller, White & Woods	USY&TCo. and DG for B&O	$ .75
Do	USY&TCo. and CGW	7.75
Do	USY&TCo. and C&A	.50
Do	USY&TCo. and DG for C&A	74.75
Do	USY&TCo. and DG for Erie	1.75
Do	USY&TCo. and PM	.50
Do	USY&TCo. and WAB	.25
Do	USY&TCo. and DG for PM	4.25
Do	USY&TCo. and DG for CGW	133.00
Do	USY&TCo. and NYC	.50
Do	USY&TCo. and CI&L	1.25
Do	USY&TCo. and DG for AT&SF	194.75
Do	USY&TCo. and PCC&StL and Penn	.75
Do	USY&TCo. and Penn	.25
Do	USY&TCo. and Soo	.50
Do	USY&TCo. and MC	.25
Do	USY&TCo. and C&EI	4.75
Do	USY&TCo. and DG for C&EI	93.25
Do	USY&TCo. and DG for MC	1.50
Do	USY&TCo. and DG for Soo	20.50
Do	USY&TCo. and DG for NYC	16.75
Do	USY&TCo. and DG for PCC&StL&Penn	15.25
Do	USY&TCo. and DG for WAB	97.50
Do	USY&TCo. and DG for GT	7.00
Do	USY&TCo. and DG for CI&L	25.00
Do	USY&TCo. and DG for NYC&StL	2.00
Do	USY&TCo. and DG for Penn	3.50
Do	USY&TCo. and DG for CRI&P	432.00
Do	USY&TCo. and DG for CB&Q	545.50
Do	USY&TCo. and DG for CM&StP	548.50
Do	USY&TCo. and DG for IC	110.25
Do	USY&TCo. and AT&SF	6.50
Do	USY&TCo. and CB&Q	84.50
Do	USY&TCo. and CRI&P	34.00
Do	USY&TCo. and IC	1.50
Do	USY&TCo. and CM&StP	58.25
Do	USY&TCo. and DG for C&NW	526.50
Do	USY&TCo. and C&NW	81.75
P. T. Dolan, trading as Miller & Dolan	USY&TCo. and DG for B&O	1.25
Do	USY&TCo. and CGW	10.25
Do	USY&TCo. and DG for C&A	4.75
Do	USY&TCo. and PM	2.75
Do	USY&TCo. and DG for PM	2.50
Do	USY&TCo. and DG for CGW	34.50
Do	USY&TCo. and NYC	1.25
Do	USY&TCo. and CI&L	.50
Do	USY&TCo. and DG for AT&SF	3.00
Do	USY&TCo. and GT	.50
Do	USY&TCo. and Penn	.75
Do	USY&TCo. and Soo	.50
Do	USY&TCo. and C&EI	.25

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for C&EI	3.75
	Do	USY&TCo. and DG for MC	.25
	Do	USY&TCo. and DG for Soo	66.50
	Do	USY&TCo. and DG for NYC	3.75
	Do	USY&TCo. and DG for PCC&StL&Penn	1.75
	Do	USY&TCo. and DG for WAB	34.50
	Do	USY&TCo. and DG for GT	1.50
	Do	USY&TCo. and DG for CI&L	3.50
374	Do	USY&TCo. and DG for Penn	$ 2.25
	Do	USY&TCo. and DG for CRI&P	167.00
	Do	USY&TCo. and DG for CB&Q	348.00
	Do	USY&TCo. and DG for CM&StP	239.00
	Do	USY&TCo. and DG for IC	33.50
	Do	USY&TCo. and AT&SF	3.50
	Do	USY&TCo. and CB&Q	36.50
	Do	USY&TCo. and CRI&P	24.00
	Do	USY&TCo. and IC	5.75
	Do	USY&TCo. and CM&StP	45.25
	Do	USY&TCo. and DG for C&NW	445.50
	Do	USY&TCo. and C&NW	86.25
	Frank R. Mullen, trading as Mullen Commission Company	USY&TCo. and DG for B&O	.75
	Do	USY&TCo. and CGW	11.00
	Do	USY&TCo. and DG for C&A	1.75
	Do	USY&TCo. and DG for Erie	.50
	Do	USY&TCo. and PM	.25
	Do	USY&TCo. and Erie	.25
	Do	USY&TCo. and DG for PM	1.25
	Do	USY&TCo. and DG for CGW	84.25
	Do	USY&TCo. and NYC	.50
	Do	USY&TCo. and DG for AT&SF	18.50
	Do	USY&TCo. and GT	1.25
	Do	USY&TCo. and Penn	.50
	Do	USY&TCo. and C&EI	.75
	Do	USY&TCo. and DG for C&EI	9.50
	Do	USY&TCo. and DG for Soo	11.00
	Do	USY&TCo. and DG for NYC	3.00
	Do	USY&TCo. and DG for PCC&StL&Penn	1.50
	Do	USY&TCo. and DG for Wab	4.50
	Do	USY&TCo. and DG for GT	18.50
	Do	USY&TCo. and DG for CI&L	1.25
	Do	USY&TCo. and DG for NYC&StL	.50
	Do	USY&TCo. and DG for Penn	4.00
	Do	USY&TCo. and DG for CRI&P	165.50
	Do	USY&TCo. and DG for CB&Q	90.50
	Do	USY&TCo. and DG for CM&StP	357.25
	Do	USY&TCo. and DG for IC	23.25
	Do	USY&TCo. and DG for C&NW	151.50
	Do	USY&TCo. and C&NW	22.50
	Do	USY&TCo. and AT&SF	1.00
	Do	USY&TCo. and CB&Q	13.25
	Do	USY&TCo. and CRI&P	24.75
	Do	USY&TCo. and IC	.50
	Do	USY&TCo. and CM&StP	43.25
375	Robert S. Murray, trading as Murray & McDowell	USY&TCo. and DG for B&O	$ .75
	Do	USY&TCo. and CGW	6.75

	Complainants	Defendants	Amount
	Do	USY&TCo. and C&A	3.00
	Do	USY&TCo. and DG for C&A	60.50
	Do	USY&TCo. and DG for Erie	.50
	Do	USY&TCo. and PM	9.00
	Do	USY&TCo. and Wab	.25
	Do	USY&TCo. and DG for PM	61.75
	Do	USY&TCo. and DG for CGW	72.50
	Do	USY&TCo. and NYC	.50
	Do	USY&TCo. and CI&L	1.25
	Do	USY&TCo. and DG for AT&SF	30.75
	Do	USY&TCo. and GT	5.50
	Do	USY&TCo. and Soo	7.00
	Do	USY&TCo. and MC	5.50
	Do	USY&TCo. and C&EI	5.75
	Do	USY&TCo. and DG for C&EI	30.25
	Do	USY&TCo. and DG for MC	76.00
	Do	USY&TCo. and DG for Soo	58.25
	Do	USY&TCo. and DG for NYC	8.00
	Do	USY&TCo. and DG for PCC&StL and Penn	.25
	Do	USY&TCo. and DG for Wab	42.50
	Do	USY&TCo. and DG for C&NW	467.25
	Do	USY&TCo. and C&NW	97.75
	Do	USY&TCo. and DG for GT	20.50
	Do	USY&TCo. and DG for CI&L	9.50
	Do	USY&TCo. and DG for Penn	1.50
	Do	USY&TCo. and DG for CRI&P	223.50
	Do	USY&TCo. and DG for CB&Q	86.00
	Do	USY&TCo. and DG for CM&StP	566.00
	Do	USY&TCo. and DG for IC	242.00
	Do	USY&TCo. and AT&SF	2.75
	Do	USY&TCo. and CB&Q	13.00
	Do	USY&TCo. and CRI&P	40.25
	Do	USY&TCo. and IC	15.50
	Do	USY&TCo. and CM&StP	90.50
	B. F. Hubbird, trading as Minteer, Hubbird & Company	USY&TCo. and DG for B&O	14.00
	Do	USY&TCo. and CGW	.75
	Do	USY&TCo. and DG for C&A	2.00
	Do	USY&TCo. and DG for Erie	42.75
	Do	USY&TCo. and Erie	3.75
	Do	USY&TCo. and DG for PM	1.50
	Do	USY&TCo. and DG for CGW	37.50
	Do	USY&TCo. and NYC	.25
	Do	USY&TCo. and DG for AT&SF	11.75
	Do	USY&TCo. and DG for C&EI	1.00
	Do	USY&TCo. and DG for Soo	4.75
	Do	USY&TCo. and DG for NYC	4.50
	Do	USY&TCo. and DG for PCC&StL and Penn	1.50
	Do	USY&TCo. and DG for Wab	1.00
	Do	USY&TCo. and DG for GT	.75
	Do	USY&TCo. and DG for CI&L	8.25
	Do	USY&TCo. and DG for NYC&StL	1.25
	Do	USY&TCo. and DG for Penn	3.00
	Do	USY&TCo. and DG for CRI&P	189.75
376	Do	USY&TCo. and DG for CB&Q	$ 375.75
	Do	USY&TCo. and DG for CM&StP	466.25
	Do	USY&TCo. and DG for IC	32.75
	Do	USY&TCo. and CB&Q	103.25

Complainants	Defendants	Amount
Do	USY&TCo. and CRI&P	30.00
Do	USY&TCo. and IC	6.50
Do	USY&TCo. and CM&StP	66.00
Do	USY&TCo. and C&NW	24.75
Do	USY&TCo. and DG for C&NW	197.00
National Livestock Commission Company	USY&TCo. and DG for B&O	17.75
Do	USY&TCo. and CGW	43.50
Do	USY&TCo. and C&A	21.75
Do	USY&TCo. and DG for C&A	480.25
Do	USY&TCo. and DG for Erie	107.75
Do	USY&TCo. and PM	11.25
Do	USY&TCo. and Erie	7.50
Do	USY&TCo. and Wab	16.50
Do	USY&TCo. and DG for PM	36.00
Do	USY&TCo. and DG for CGW	236.75
Do	USY&TCo. and NYC	26.50
Do	USY&TCo. and CIL	13.25
Do	USY&TCo. and DG for AT&SF	542.75
Do	USY&TCo., PCC&StL and Penn	5.50
Do	USY&TCo. and NYC&StL	8.50
Do	USY&TCo. and GT	16.25
Do	USY&TCo. and Penn	23.75
Do	USY&TCo. and Soo	29.00
Do	USY&TCo. and MC	34.00
Do	USY&TCo. and C&EI	20.25
Do	USY&TCo. and DG for C&EI	232.75
Do	USY&TCo. and DG for MC	107.25
Do	USY&TCo. and DG for Soo	160.00
Do	USY&TCo. and DG for NYC	116.25
Do	USY&TCo. and DG for PCC&StL and Penn	78.25
Do	USY&TCo. and DG for Wab	367.25
Do	USY&TCo. and DG for GT	94.50
Do	USY&TCo. and DG for CI&L	105.50
Do	USY&TCo. and DG for NYC&StL	84.75
Do	USY&TCo. and DG for Penn	90.75
Do	USY&TCo. and DG for CRI&P	1,402.50
Do	USY&TCo. and DG for CB&Q	1,388.50
Do	USY&TCo. and DG for CM&StP	1,109.25
Do	USY&TCo. and DG for IC	738.75
Do	USY&TCo. and AT&SF	48.50
Do	USY&TCo. and CB&Q	341.75
Do	USY&TCo. and CRI&P	251.00
Do	USY&TCo. and IC	57.75
Do	USY&TCo. and CM&StP	213.00
Do	USY&TCo. and DG for C&NW	1,623.00
Do	USY&TCo. and C&NW	328.00
Northwestern Livestock Commission Company	USY&TCo. and DG for B&O	.75
Do	USY&TCo. and CGW	2.50
Do	USY&TCo. and C&A	.25
Do	USY&TCo. and DG for C&A	30.75
377 Do	USY&TCo. and DG for Erie	$ .75
Do	USY&TCo. and DG forCGW	28.25
Do	USY&TCo. and NYC	1.00
Do	USY&TCo. and DG forAT&SF	32.00
Do	USY&TCo. and Soo	16.75
Do	USY&TCo. and DG for C&EI	10.25
Do	USY&TCo. and DG for Soo	62.00

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for NYC	6.50
	Do	USY&TCo. and DG for PCC&StL and Penn	.25
	Do	USY&TCo. and DG for Wab	34.50
	Do	USY&TCo. and DG for GT	.25
	Do	USY&TCo. and DG for NYC&StL	.25
	Do	USY&TCo. and DG for Penn	.50
	Do	USY&TCo. and DG for CRI&P	45.25
	Do	USY&TCo. and DG for CB&Q	103.00
	Do	USY&TCo. and DG for CM&StP	478.50
	Do	USY&TCo. and DG for IC	129.00
	Do	USY&TCo. and AT&SF	.75
	Do	USY&TCo. and CB&Q	30.50
	Do	USY&TCo. and CRI&P	8.25
	Do	USY&TCo. and IC	10.50
	Do	USY&TCo. and DG for CM&StP	65.00
	Do	USY&TCo. and DG for C&NW	507.00
	Do	USY&TCo. and C&NW	133.50
	G. W. Nixon, C. S. Horn and W. H. Chisholm, co-partners trading as Nixon, Horn & Chisholm	USY&TCo. and DG for B&O	.50
	Do	USY&TCo. and CGW	4.00
	Do	USY&TCo. and DG for C&A	13.00
	Do	USY&TCo. and DG for Erie	4.50
	Do	USY&TCo. and Erie	2.25
	Do	USY&TCo. and Wab	.50
	Do	USY&TCo. and DG for CGW	110.75
	Do	USY&TCo. and NYC	1.25
	Do	USY&TCo. and DG for AT&SF	81.50
	Do	USY&TCo. and GT	.25
	Do	USY&TCo. and Penn	.75
	Do	USY&TCo. and Soo	6.75
	Do	USY&TCo. and MC	.75
	Do	USY&TCo. and C&EI	.75
	Do	USY&TCo. and DG for C&EI	33.25
	Do	USY&TCo. and DG for MC	2.25
	Do	USY&TCo. and DG for Soo	70.25
	Do	USY&TCo. and DG for NYC	7.75
	Do	USY&TCo. and DG for PCC&StL and Penn	1.00
	Do	USY&TCo. and DG for Wab	28.75
	Do	USY&TCo. and DG for GT	2.00
	Do	USY&TCo. and DG for CI&L	4.50
	Do	USY&TCo. and DG for NYC&StL	.50
	Do	USY&TCo. and DG for Penn	2.00
	Do	USY&TCo. and DG for CRI&P	63.75
	Do	USY&TCo. and DG for CB&Q	381.75
	Do	USY&TCo. and DG for CM&StP	418.00
	Do	USY&TCo. and DG for IC	182.75
	Do	USY&TCo. and AT&SF	4.75
378	Do	USY&TCo. and CB&Q	$ 59.00
	Do	USY&TCo. and CRI&P	9.75
	Do	USY&TCo. and IC	6.00
	Do	USY&TCo. and CM&StP	56.25
	Do	USY&TCo. and DG for C&NW	301.00
	Do	USY&TCo. and C&NW	59.25
	North American Live-stock Commission Company	USY&TCo. and CGW	7.00
	Do	USY&TCo. and DG for C&A	.50

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for CGW	21.75
	Do	USY&TCo. and NYC	.25
	Do	USY&TCo. and DG for C&EI	3.75
	Do	USY&TCo. and DG for NYC	1.50
	Do	USY&TCo. and DG for PCC&StL and Penn	.25
	Do	USY&TCo. and DG for Wab	5.75
	Do	USY&TCo. and DG for GT	.25
	Do	USY&TCo. and DG for CI&L	3.75
	Do	USY&TCo. and DG for CRI&P	172.50
	Do	USY&TCo. and DG for CB&Q	28.25
	Do	USY&TCo. and DG for CM&StP	115.25
	Do	USY&TCo. and DG for IC	21.75
	Do	USY&TCo. and CB&Q	3.75
	Do	USY&TCo. and CRI&P	25.25
	Do	USY&TCo. and CM&StP	14.25
	Do	USY&TCo. and DG for C&NW	153.00
	Do	USY&TCo. and C&NW	23.50
	Silas Palmer and W. H. Palmer, copartners trading as Silas Palmer & Son	USY&TCo. and DG for B&O	.50
	Do	USY&TCo. and CGW	11.00
	Do	USY&TCo. and DG for C&A	12.50
	Do	USY&TCo. and DG for Erie	10.00
	Do	USY&TCo. and PM	1.00
	Do	USY&TCo. and DG for PM	8.75
	Do	USY&TCo. and DG for CGW	178.25
	Do	USY&TCo. and NYC	11.25
	Do	USY&TCo. and CI&L	5.75
	Do	USY&TCo. and DG for AT&SF	20.50
	Do	USY&TCo., PCC&StL and Penn	1.50
	Do	USY&TCo. and NYC&StL	.25
	Do	USY&TCo. and GT	1.00
	Do	USY&TCo. and Penn	2.75
	Do	USY&TCo. and Soo	4.00
	Do	USY&TCo. and C&EI	.75
	Do	USY&TCo. and DG for C&EI	11.75
	Do	USY&TCo. and DG for MC	2.00
	Do	USY&TCo. and DG for Soo	41.50
	Do	USY&TCo. and DG for NYC	35.00
	Do	USY&TCo. and DG for PCC&StL and Penn	26.00
	Do	USY&TCo. and DG for Wab	3.00
	Do	USY&TCo. and DG for C&NW	485.50
	Do	USY&TCo. and C&NW	90.25
	Do	USY&TCo. and DG for GT	14.75
379	Do	USY&TCo. and DG for GI&L	$ 80.25
	Do	USY&TCo. and DG for NYC&StL	4.50
	Do	USY&TCo. and DG for Penn	4.75
	Do	USY&TCo. and DG for CRI&P	130.75
	Do	USY&TCo. and DG for CB&Q	189.00
	Do	USY&TCo. and DG for CM&StP	222.00
	Do	USY&TCo. and DG for IC	70.75
	Do	USY&TCo. and AT&SF	5.00
	Do	USY&TCo. and CB&Q	42.75
	Do	USY&TCo. and CRI&P	15.25
	Do	USY&TCo. and IC	6.00
	Do	USY&TCo. and CM&StP	67.50

Complainants	Defendants	Amount
T. B. Vincent and C. H. Boothroyd, copartners trading as Paris Commission Company	USY&TCo. and DG for B&O	.25
Do	USY&TCo. and CGW	3.75
Do	USY&TCo. and C&A	.25
Do	USY&TCo. and DG for C&A	6.00
Do	USY&TCo. and DG for CGW	83.50
Do	USY&TCo. and NYC	1.00
Do	USY&TCo. and DG for AT&SF	19.75
Do	USY&TCo. and Penn	.50
Do	USY&TCo. and Soo	6.00
Do	USY&TCo. and MC	.75
Do	USY&TCo. and DG for C&EI	.75
Do	USY&TCo. and DG for MC	9.75
Do	USY&TCo. and DG for Soo	2.75
Do	USY&TCo. and DG for NYC	8.25
Do	USY&TCo. and DG for PCC&StL and Penn	1.00
Do	USY&TCo. and DG for GT	.50
Do	USY&TCo. and DG for NYC&StL	.25
Do	USY&TCo. and DG for CRI&P	11.00
Do	USY&TCo. and DG for CB&Q	138.50
Do	USY&TCo. and DG for CM&StP	100.75
Do	USY&TCo. and DG for IC	16.25
Do	USY&TCo. and AT&SF	3.00
Do	USY&TCo. and CB&Q	25.75
Do	USY&TCo. and IC	.50
Do	USY&TCo. and CM&StP	19.75
Do	USY&TCo. and DG for C&NW	127.75
Do	USY&TCo. and C&NW	20.50
W. C. Patterson, trading as John Patterson & Son	USY&TCo. and DG for CGW	1.00
Do	USY&TCo. and DG for AT&SF	54.00
Do	USY&TCo. and DG for C&EI	9.25
Do	USY&TCo. and DG for NYC	.25
Do	USY&TCo. and DG for Penn	.25
Do	USY&TCo. and DG for CRI&P	12.50
Do	USY&TCo. and DG for CB&Q	88.25
Do	USY&TCo. and DG for CM&StP	1.75
Do	USY&TCo. and AT&SF	1.25
Do	USY&TCo. and CB&Q	3.25
Do	USY&TCo. and CRI&P	2.75
Do	USY&TCo. and IC	.50
Do	USY&TCo. and CM&StP	.50
Do	USY&TCo. and DG for C&NW	1.00
380 W. A. Peterson and Wm. Turnbull. copartners trading as Peterson, Turnbull & Company	USY&TCo. and DG for C&A	$ 26.25
Do	USY&TCo. and DG for Erie	.25
Do	USY&TCo. and DG for CGW	23.25
Do	USY&TCo. and DG for AT&SF	31.75
Do	USY&TCo. and Soo	.75
Do	USY&TCo. and DG for C&EI	14.75
Do	USY&TCo. and DG for Soo	.25
Do	USY&TCo. and DG for NYC	14.50

Complainants	Defendants	Amount
Do	USY&TCo. and DG for Wab	9.00
Do	USY&TCo. and DG for GT	.50
Do	USY&TCo. and DG for CI&L	1.25
Do	USY&TCo. and DG for NYC&StL	.50
Do	USY&TCo. and DG for CRI&P	61.25
Do	USY&TCo. and DG for CB&Q	57.75
Do	USY&TCo. and DG for CM&St.P	21.00
Do	USY&TCo. and DG for IC	49.00
Do	USY&TCo. and DG for C&NW	106.75
J. H. Piatt, trading as Abner Piatt & Company	USY&TCo. and C&A	.75
Do	USY&TCo. and DG for C&A	1.25
Do	USY&TCo. and DG for CGW	26.50
Do	USY&TCo. and DG for C&EI	1.50
Do	USY&TCo. and DG for Wab	6.25
Do	USY&TCo. and DG for GT	.75
Do	USY&TCo. and DG for CRI&P	20.75
Do	USY&TCo. and DG for CB&Q	3.75
Do	USY&TCo. and DG for CM&StP	134.50
Do	USY&TCo. and DG for IC	1.00
Do	USY&TCo. and CRI&P	9.00
Do	USY&TCo. and CM&StP	24.50
Do	USY&TCo. and DG for C&NW	60.75
Do	USY&TCo. and C&NW	18.50
Thos. K. Polley, trading as Thos. K. Polley & Company	USY&TCo. and DG for CM&StP	7.75
Do	USY&TCo. and CRI&P	12.25
Do	USY&TCo. and CM&StP	19.75
Do	USY&TCo. and DG for C&NW	5.50
Do	USY&TCo. and C&NW	7.50
381 R. H. Pritchard, trading as Pritchard Commission Company	USY&TCo. and CGW	$ 4.25
Do	USY&TCo. and C&A	1.00
Do	USY&TCo. and DG for C&A	4.25
Do	USY&TCo. and DG for CGW	52.50
Do	USY&TCo. and CI&L	.25
Do	USY&TCo. and DG for AT&SF	4.50
Do	USY&TCo. and Soo	1.25
Do	USY&TCo. and DG for C&EI	3.75
Do	USY&TCo. and DG for Soo	6.50
Do	USY&TCo. and DG for NYC	9.50
Do	USY&TCo. and DG for Wab	8.00
Do	USY&TCo. and DG for GT	.75
Do	USY&TCo. and DG for CI&L	.25
Do	USY&TCo. and DG for NYC&StL	.75
Do	USY&TCo. and DG for Penn	.75
Do	USY&TCo. and DG for CRI&P	218.25
Do	USY&TCo. and DG for CB&Q	33.75
Do	USY&TCo. and DG for CM&StP	107.75
Do	USY&TCo. and DG for IC	55.50
Do	USY&TCo. and AT&SF	.50
Do	USY&TCo. and CB&Q	1.75
Do	USY&TCo. and CRI&P	40.75
Do	USY&TCo. and IC	1.25

	Complainants	Defendants	Amount
	Do	USY&TCo. and CM&StP	7.75
	Do	USY&TCo. and DG for C&NW	140.75
	Do	USY&TCo. and C&NW	35.75
	Chas. R. Rice and Oscar A. Rice, copartners trading as Rice Bros.	USY&TCo. and DG for B&O	16.25
	Do	USY&TCo. and CGW	30.75
	Do	USY&TCo. and C&A	7.75
	Do	USY&TCo. and DG for C&A	108.75
	Do	USY&TCo. and DG for Erie	35.50
	Do	USY&TCo. and PM	2.25
	Do	USY&TCo. and Erie	3.25
	Do	USY&TCo. and Wab	5.75
	Do	USY&TCo. and DG for PM	11.00
	Do	USY&TCo. and DG for CGW	225.25
	Do	USY&TCo. and NYC	4.50
	Do	USY&TCo. and CI&L	.25
	Do	USY&TCo. and DG for AT&SF	173.50
	Do	USY&TCo. and PCCStL and Penn	2.00
	Do	USY&TCo. and NYC&StL	2.00
	Do	USY&TCo. and GT	1.00
	Do	USY&TCo. and Penn	3.50
	Do	USY&TCo. and Soo	15.25
	Do	USY&TCo. and MC	1.50
	Do	USY&TCo. and C&EI	6.50
	Do	USY&TCo. and DG for C&EI	134.25
	Do	USY&TCo. and DG for MC	17.25
	Do	USY&TCo. and DG for Soon	81.00
	Do	USY&TCO. and DG for NYC	64.00
	Do	USY&TCo. and DG for PCC&StL and Penn	47.00
382	Do	USY&TCo. and DG for Wab	$ 85.75
	Do	USY&TCo. and DG for GT	19.75
	Do	USY&TCo. and DG for CI&L	28.50
	Do	USY&TCo. and DG for NYC&St.L	34.50
	Do	USY&TCo. and DG for Penn	50.50
	Do	USY&TCo. and DG for CRI&P	651.50
	Do	USY&TCo. and DG for CB&Q	617.00
	Do	USY&TCo. and DG for CM&StP	1087.50
	Do	USY&TCo. and DG for IC	519.25
	Do	USY&TCo. and AT&SF	31.50
	Do	USY&TCo. and CB&Q	76.25
	Do	USY&TCo. and CRI&P	42.50
	Do	USY&TCo. and IC	54.25
	Do	USY&TCo. and CM&StP	175.00
	Do	USY&TCo. and DG for C&NW	1321.75
	Do	USY&TCo. and C&NW	230.75
	J. B. Roach and W. P. Roach, copartners trading as Roach Livestock Commission Company	USY&TCo. and CGW	10.75
	Do	USY&TCo. and DG for C&A	26.25
	Do	USY&TCo. and DG for PM	.25
	Do	USY&TCo. and DG for CGW	160.50
	Do	USY&TCo. and NYC	.25
	Do	USY&TCo. and CI&L	.25
	Do	USY&TCo. and DG for AT&SF	2.00
	Do	USY&TCo. and Soo	2.25
	Do	USY&TCo. and DG for C&EI	4.25

Complainants	Defendants	Amount
Do	USY&TCo. and DG for Soo	11.75
Do	USY&TCo. and DG for NYC	4.00
Do	USY&TCo. and DG for PCC&St L&Penn	.50
Do	USL&TCo. and DG for Wab	25.75
Do	USY&TCo. and DG for Penn	.50
Do	USY&TCo. and DG for CRI&P	169.00
Do	USY&TCo. and DG for CB&Q	188.25
Do	USY&TCo. and DG for CM&StP	395.75
Do	USY&TCo. and DG for IC	52.75
Do	USY&TCo. and CB&Q	30.75
Do	USY&TCo. and CRI&P	47.75
Do	USY&TCo. and IC	3.25
Do	USY&TCo. and CM&StP	87.75
Do	USY&TCo. and DG for C&NW	325.00
Do	USY&TCo. and C&NW	62.75
Rosenbaum & Company	USY&TCo. and DG for B&O	2.50
Do	USY&TCo. and CGW	9.25
Do	USY&TCo. and C&A	5.75
Do	USY&TCo. and DG for C&A	24.50
Do	USY&TCo. and DG for Erie	.25
Do	USY&TCo. and PM	.75
Do	USY&TCo. and Wab	1.75
Do	USY&TCo. and DG for CGW	104.75
Do	USY&TCo. and NYC	2.75
Do	USY&TCo. and DG for AT&SF	97.50
Do	USY&TCo. and GT	.50
Do	USY&TCo. and Soo	60.75
Do	USY&TCo. and C&EI.	41.25
383 Do	USY&TCo. and DG for C&EI	$ 13.50
Do	USY&TCo. and DG for MC	.75
Do	USY&TCo. and DG for Soo	106.50
Do	USY&TCo. and DG for NYC	17.25
Do	USY&TCo. and DG for PCC&StL&Penn	3.00
Do	USY&TCo. and DG for Wab	102.75
Do	USY&TCo. and DG for GT	9.50
Do	USY&TCo. and DG for CI&L	5.00
Do	USY&TCo. and DG for Penn	3.25
Do	USY&TCo. and DG for CRI&P	292.00
Do	USY&TCo. and DG for CB&Q	1161.00
Do	USY&TCo. and DG for CM&StP	841.25
Do	USY&TCo. and DG for IC	51.00
Do	USY&TCo. and DG for C&NW	778.75
Do	USY&TCo. and AT&SF	4.00
Do	USY&TCo. and CB&Q	438.50
Do	USY&TCo. and CRI&P	15.25
Do	USY&TCo. and IC	6.00
Do	USY&TCo. and CM&StP	274.25
Do	USY&TCo. and C&NW	194.75
F. W. Sheldon, trading as F. W. Sheldon & Company	USY&TCo. and CGW	20.00
Do	USY&TCo. and Erie	.25
Do	USY&TCo. and DG for CGW	65.00
Do	USY&TCo. and DG for C&EI	.50
Do	USY&TCo. and DG for GT	.25
Do	USY&TCo. and DG for CRI&P	57.50
Do	USY&TCo. and DG for CB&Q	40.50
Do	USY&TCo. and DG for CM&StP	16.00

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for IC	57.00
	Do	USY&TCo. and CB&Q	.25
	Do	USY&TCo. and CRI&P	2.50
	Do	USY&TCo. and IC	11.00
	Do	USY&TCo. and CM&StP	1.25
	Do	USY&TCo. and DG for C&NW	33.00
	Do	USY&TCo. and C&NW	2.25
	W. Harry Sherwood and Russell H. Sherwood, copartners, trading as Sherwood & Son	USY&TCo. and DG for C&A	4.75
	Do	USY&TCo. and DG for CGW	.25
	Do	USY&TCo. and Soo	5.75
	Do	USY&TCo. and DG for C&EI	18.50
	Do	USY&TCo. and DG for MC	2.50
	Do	USY&TCo. and DG for Soo	12.25
	Do	USY&TCo. and DG for NYC	.25
	Do	USY&TCo. and DG for Wab	8.00
	Do	USY&TCo. and DG for CRI&P	27.50
	Do	USY&TCo. and DG for CB&Q	51.00
	Do	USY&TCo. and DG for CM&StP	22.50
	Do	USY&TCo. and DG for IC	50.75
	Do	USY&TCo. and CB&Q	8.75
	Do	USY&TCo. and CRI&P	1.75
	Do	USY&TCo. and CM&StP	4.00
	Do	USY&TCo. and DG for C&NW	117.25
	Do	USY&TCo. and C&NW	6.75
384	J. Paul Shinn, Chas. H. Moberly and I. Q. Fry, copartners trading as Shinn, Fry & Moberly, successors to Shinn, Fry & Company	USY&TCo. and DG for B&O	1.75
	Do	USY&TCo. and CGW	.50
	Do	USY&TCo. and C&A	14.50
	Do	USY&TCo. and DG for C&A	232.50
	Do	USY&TCo. and Wab	2.00
	Do	USY&TCo. and DG for PM	.25
	Do	USY&TCo. and DG for CGW	5.25
	Do	USY&TCo. and DG for AT&SF	7.50
	Do	USY&TCo. and GT	1.00
	Do	USY&TCo. and Penn.	.25
	Do	USY&TCo. and DG for C&EI	14.50
	Do	USY&TCo. and DG for Soo	1.00
	Do	USY&TCo. and DG for NYC	6.75
	Do	USY&TCo. and DG for PCC&StL&Penn	6.00
	Do	USY&TCo. and DG for Wab	76.25
	Do	USY&TCo. and DG for GT	.25
	Do	USY&TCo. and DG for CI&L	1.50
	Do	USY&TCo. and DG for NYC&StL	.75
	Do	USY&TCo. and DG for Penn	1.25
	Do	USY&TCo. and DG for CRI&P	234.50
	Do	USY&TCo. and DG for CB&Q	87.25
	Do	USY&TCo. and DG for CM&StP	33.00
	Do	USY&TCo. and DG for IC	69.50
	Do	USY&TCo. and AT&SF	1.75
	Do	USY&TCo. and CB&Q	7.00
	Do	USY&TCo. and CRI&P	31.50

	Complainants	Defendants	Amount
	Do	USY&TCo. and IC	5.75
	Do	USY&TCo. and CM&StP	1.00
	Do	USY&TCo. and DG for C&NW	28.50
	Do	USY&TCo. and C&NW	9.25
	James G. Shutter	USY&TCo. and CGW	1.00
	Do	USY&TCo. and DG for CRI&P	3.50
	Do	USY&TCo. and DG for CB&Q	79.50
	Do	USY&TCo. and DG for CM&StP	16.25
	Do	USY&TCo. and DG for IC	25.25
	Do	USY&TCo. and CB&Q	4.50
	Do	USY&TCo. and IC	5.00
	Do	USY&TCo. and CM&StP	2.75
	Do	USY&TCo. and DG for C&NW	21.00
	Do	USY&TCo. and C&NW	5.25
	W. R. Smith, J. C. Eastes and John Smith, copartners trading as W. R. Smith & Company	USY&TCo. and DG for B&O	.25
	Do	USY&TCo. and CGW	3.75
	Do	USY&TCo. and DG for C&A	8.75
	Do	USY&TCo. and DG for Erie	.50
	Do	USY&TCo. and PM	.25
	Do	USY&TCo. and DG for PM	.25
	Do	USY&TCo. and DG for CGW	46.00
	Do	USY&TCo. and DG for AT&SF	2.00
	Do	USY&TCo. and GT	2.00
	Do	USY&TCo. and DG for C&EI	5.50
	Do	USY&TCo. and DG for Soo	12.50
	Do	USY&TCo. and DG for NYC	1.25
385	Do	USY&TCo. and DG for PCC&StL&Penn	$ .25
	Do	USY&TCo. and DG for Wab	10.25
	Do	USY&TCo. and DG for GT	8.00
	Do	USY&TCo. and DG for CI&L	4.25
	Do	USY&TCo. and DG for Penn	.50
	Do	USY&TCo. and DG for CRI&P	53.00
	Do	USY&TCo. and DG for CB&Q	201.00
	Do	USY&TCo. and DG for CM&StP	206.75
	Do	USY&TCo. and DG for IC	23.75
	Do	USY&TCo. and CB&Q	22.75
	Do	USY&TCo. and CRI&P	12.00
	Do	USY&TCo. and IC	2.25
	Do	USY&TCo. and CM&StP	49.00
	Do	USY&TCo. and DG for C&NW	400.50
	Do	USY&TCo. and C&NW	42.25
	T. B. Stafford and A. B. Stafford, copartners trading as Stafford Bros.	USY&TCo. and DG for B&O	.75
	Do	USY&TCo. and CGW	5.25
	Do	USY&TCo. and C&A	6.50
	Do	USY&TCo. and DG for C&A	308.50
	Do	USY&TCo. and DG for Erie	1.00
	Do	USY&TCo. and Wab	2.25
	Do	USY&TCo. and DG for PM	3.50
	Do	USY&TCo. and DG for CGW	53.50
	Do	USY&TCo. and NYC	.50
	Do	USY&TCo. and DG for AT&SF	139.75
	Do	USY&TCo. and Penn	1.00
	Do	USY&TCo. and Soo	1.25

	Complainants	Defendants	Amount
	Do	USY&TCo. and C&EI	.25
	Do	USY&TCo. and DG for C&EI	13.00
	Do	USY&TCo. and DG for Soo	11.75
	Do	USY&TCo. and DG for NYC	7.00
	Do	USY&TCo. and DG for PCC&StL&Penn	2.25
	Do	USY&TCo. and DG for Wab	71.75
	Do	USY&TCo. and DG for GT	3.25
	Do	USY&TCo. and DG for CI&L	11.50
	Do	USY&TCo. and DG for NYC&StL	1.25
	Do	USY&TCo. and DG for Penn	6.25
	Do	USY&TCo. and DG for CRI&P	418.25
	Do	USY&TCo. and DG for CB&Q	246.50
	Do	USY&TCo. and DG for CM&StP	447.25
	Do	USY&TCo. and DG for IC	175.75
	Do	USY&TCo. and AT&SF	12.00
	Do	USY&TCo. and CB&Q	45.50
	Do	USY&TCo. and CRI&P	59.25
	Do	USY&TCo. and IC	35.25
	Do	USY&TCo. and CM&StP	60.50
	Do	USY&TCo. and DG for C&NW	502.50
	Do	USY&TCo. and C&NW	158.00
386	Standard Livestock Commission Company	USY&TCo. and DG for B&O	$ 10.00
	Do	USY&TCo. and CGW	12.00
	Do	USY&TCo. and C&A	1.00
	Do	USY&TCo. and DG for C&A	8.60
	Do	USY&TCo. and DG for Erie	2.50
	Do	USY&TCo. and PM	11.75
	Do	USY&TCo. and Erie	.25
	Do	USY&TCo. and Wab	1.50
	Do	USY&TCo. and DG for PM	78.25
	Do	USY&TCo. and DG for CGW	53.25
	Do	USY&TCo. and NYC	2.75
	Do	USY&TCo. and CI&L	1.50
	Do	USY&TCo. and DG for AT&SF	15.75
	Do	USY&TCo. and PCC&StL and Penn	.50
	Do	USY&TCo. and NYC&StL	.25
	Do	USY&TCo. and GT	7.75
	Do	USY&TCo. and Penn	7.25
	Do	USY&TCo. and Soo	18.00
	Do	USY&TCo. and MC	4.25
	Do	USY&TCo. and C&EI	4.25
	Do	USY&TCo. and DG for C&EI	103.75
	Do	USY&TCo. and DG for MC	27.75
	Do	USY&TCo. and DG for Soo	87.75
	Do	USY&TCo. and DG for NYC	44.50
	Do	USY&TCo. and DG for PCC&StL and Penn	11.75
	Do	USY&TCo. and DG for Wab	19.00
	Do	USY&TCo. and DG for GT	34.25
	Do	USY&TCo. and DG for CI&L	57.00
	Do	USY&TCo. and DG for NYC&StL	6.00
	Do	USY&TCo. and DG for Penn	16.00
	Do	USY&TCo. and DG for CRI&P	116.75
	Do	USY&TCo. and DG for CB&Q	407.75
	Do	USY&TCo. and DG for CM&StP	499.00
	Do	USY&TCo. and DG for IC	95.25
	Do	USY&TCo. and AT&SF	.25
	Do	USY&TCo. and CB&Q	38.25

	Complainants	Defendants	Amount
	Do	USY&TCo. and CRI&P	11.75
	Do	USY&TCo. and IC	7.75
	Do	USY&TCo. and CM&StP	78.50
	Do	USY&TCo. and DG for C&NW	493.75
	Do	USY&TCo. and C&NW	123.50
	A. F. Starett, Jr., O. A. Mathison, A. C. Granger and M. E. Peschong, copartners trading as Starett, Mathison & Company	USY&TCo. and DG for B&O	.50
	Do	USY&TCo. and CGW	23.75
	Do	USY&TCo. and DG for C&A	6.25
	Do	USY&TCo. and DG for Erie	.75
	Do	USY&TCo. and Erie	.25
	Do	USY&TCo. and DG for PM	3.50
	Do	USY&TCo. and DG for CGW	150.50
	Do	USY&TCo. and NYC	.75
387	Do	USY&TCo. and CI&L	$ .75
	Do	USY&TCo. and DG for AT&SF	17.00
	Do	USY&TCo., PCC&StL and Penn	2.00
	Do	USY&TCo. and Soo	4.00
	Do	USY&TCo. and MC	.25
	Do	USY&TCo. and C&EI	2.25
	Do	USY&TCo. and DG for C&EI	49.50
	Do	USY&TCo. and DG for MC	1.50
	Do	USY&TCo. and DG for Soo	69.75
	Do	USY&TCo. and DG for NYC	32.50
	Do	USY&TCo. and DG for PCC&StL and Penn	2.50
	Do	USY&TCo. and DG for WAB	10.00
	Do	USY&TCo. and DG for GT	.25
	Do	USY&TCo. and DG for CI&L	10.75
	Do	USY&TCo. and DG for NYC&StL	1.00
	Do	USY&TCo. and DG for Penn	1.25
	Do	USY&TCo. and DG for CRI&P	113.75
	Do	USY&TCo. and DG for CB&Q	156.00
	Do	USY&TCo. and DG for CM&StP	490.50
	Do	USY&TCo. and DG for IC	142.75
	Do	USY&TCo. and AT&SF	.75
	Do	USY&TCo. and CB&Q	22.00
	Do	USY&TCo. and CRI&P	17.25
	Do	USY&TCo. and IC	24.00
	Do	USY&TCo. and CM&StP	80.75
	Do	USY&TCo. and DG for C&NW	247.75
	Do	USY&TCo. and C&NW	31.50
	Chas. E. Stephens and J. A. Goble, copartners trading as Stephens & Goble	USY&TCo. and DG for B&O	3.75
	Do	USY&TCo. and CGW	1.25
	Do	USY&TCo. and DG for C&A	30.25
	Do	USY&TCo. and DG for Erie	1.25
	Do	USY&TCo. and PM	.25
	Do	USY&TCo. and WAB	.25
	Do	USY&TCo. and DG for PM	1.25
	Do	USY&TCo. and DG for CGW	3.00
	Do	USY&TCo. and NYC	1.00
	Do	USY&TCo. and CI&L	4.75
	Do	USY&TCo. and DG for AT&SF	19.25

	Complainants	Defendants	Amount
	Do	USY&TCo. and GT	.25
	Do	USY&TCo. and Soo	29.75
	Do	USY&TCo. and C&EI	9.25
	Do	USY&TCo. and DG for C&EI	193.25
	Do	USY&TCo. and DG for MC	.75
	Do	USY&TCo. and DG for Soo	180.25
	Do	USY&TCo. and DG for NYC	34.50
	Do	USY&TCo. and DG for PCC&StL and Penn	18.50
	Do	USY&TCo. and DG for WAB	39.25
	Do	USY&TCo. and DG for GT	17.00
388	Do	USY&TCo. and DG for CI&L	$ 34.25
	Do	USY&TCo. and DG for NYC&StL	1.75
	Do	USY&TCo. and DG for Penn	2.75
	Do	USY&TCo. and DG for CRI&P	9.00
	Do	USY&TCo. and DG for CB&Q	76.50
	Do	USY&TCo. and DG for CM&StP	67.25
	Do	USY&TCo. and DG for IC	239.75
	Do	USY&TCo. and AT&SF	1.00
	Do	USY&TCo. and CB&Q	9.50
	Do	USY&TCo. and CRI&P	3.75
	Do	USY&TCo. and IC	51.75
	Do	USY&TCo. and CM&StP	15.25
	Do	USY&TCo. and DG for C&NW	115.00
	Do	USY&TCo. and C&NW	47.50
	A. F. Stewart trading as A. F. Stewart & Company	USY&TCo. and CGW	1.75
	Do	USY&TCo. and DG for CGW	9.00
	Do	USY&TCo. and DG for C&EI	.50
	Do	USY&TCo. and DG for Soo	1.50
	Do	USY&TCo. and DG for NYC	1.00
	Do	USY&TCo. and DG for GT	.25
	Do	USY&TCo. and DG for CI&L	.25
	Do	USY&TCo. and DG for NYC&StL	.50
	Do	USY&TCo. and DG for Penn	.25
	Do	USY&TCo. and DG for CRI&P	45.75
	Do	USY&TCo. and DG for CB&Q	21.00
	Do	USY&TCo. and DG for CM&StP	18.00
	Do	USY&TCo. and DG for IC	1.75
	Do	USY&TCo. and CB&Q	.25
	Do	USY&TCo. and CRI&P	2.75
	Do	USY&TCo. and IC	.50
	Do	USY&TCo. and CM&StP	5.25
	Do	USY&TCo. and DG for C&NW	124.00
	Do	USY&TCo. and C&NW	19.00
	J. E. Strader and J. L. Strader, copartners trading as Strader Bros.	USY&TCo. and DG for B&O	.25
	Do	USY&TCo. and DG for C&A	25.75
	Do	USY&TCo. and DG for Erie	.25
	Do	USY&TCo. and Erie	.25
	Do	USY&TCo. and DG for CGW	1.75
	Do	USY&TCo. and DG for AT&SF	48.00
	Do	USY&TCo. and DG for Soo	5.00
	Do	USY&TCo. and DG for NYC	5.75
	Do	USY&TCo. and DG for Wab	6.00
	Do	USY&TCo. and DG for NYC&StL	.25
	Do	USY&TCo. and DG for Penn	.25
	Do	USY&TCo. and DG for CRI&P	19.00

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for CB&Q	61.75
	Do	USY&TCo. and DG for CM&StP	2.50
	Do	USY&TCo. and AT&SF	.25
389	Do	USY&TCo. and CB&Q	$ 6.25
	Do	USY&TCo. and CRI&P	.50
	Do	USY&TCo. and CM&StP	.75
	Do	USY&TCo. and DG for C&NW	18.00
	Do	USY&TCo. and C&NW	3.00
	J. J. Sullivan and J. C. Sullivan, copartners trading as Sullivan Commission Company		
	Do	USY&TCo. and DG for B&O	.25
	Do	USY&TCo. and DG for C&A	3.50
	Do	USY&TCo. and DG for Erie	1.75
	Do	USY&TCo. and PM	5.25
	Do	USY&TCo. and Erie	.25
	Do	USY&TCo. and Wab.	7.25
	Do	USY&TCo. and DG for PM	16.25
	Do	USY&TCo. and DG for CGW	2.50
	Do	USY&TCo. and NYC	4.25
	Do	USY&TCo. and PCC&StL and Penn	1.25
	Do	USY&TCo. and NYC&StL	1.00
	Do	USY&TCo. and GT	2.75
	Do	USY&TCo. and Penn	5.00
	Do	USY&TCo. and DG for C&EI	.25
	Do	USY&TCo. and DG for Soo	.75
	Do	USY&TCo. and DG for NYC	42.00
	Do	USY&TCo. and DG for PCC&StL & Penn	8.00
	Do	USY&TCo. and DG for Wab	41.25
	Do	USY&TCo. and DG for GT	20.50
	Do	USY&TCo. and DG for CI&L	1.25
	Do	USY&TCo. and DG for NYC&StL	6.00
	Do	USY&TCo. and DG for Penn	17.25
	Do	USY&TCo. and DG for CRI&P	15.50
	Do	USY&TCo. and DG for CB&Q	5.50
	Do	USY&TCo. and DG for CM&StP	19.75
	Do	USY&TCo. and DG for IC	17.50
	Do	USY&TCo. and CRI&P	6.00
	Do	USY&TCo. and IC	6.00
	Do	USY&TCo. and CM&StP	9.75
	Do	USY&TCo. and DG for C&NW	98.00
	Do	USY&TCo. and C&NW	28.25
	A. Gilmore, C. L. Swanson and C. J. Catenhold, Copartners trading as Swanson, Gilmore & Gastenhold		
	Do	USY&TCo. and DG for B&O	18.75
	Do	USY&TCo. and CGW	7.75
	Do	USY&TCo. and DG for C&A	41.25
	Do	USY&TCo. and DG for Erie	13.25
	Do	USY&TCo. and PM	2.25
	Do	USY&TCo. and Erie	2.25
	Do	USY&TCo. and Wab	.75
	Do	USY&TCo. and DG for PM	18.50
	Do	USY&TCo. and DG for CGW	46.00
	Do	USY&TCo. and NYC	4.25
	Do	USY&TCo. and CI&L	.25
390	Do	USY&TCo. and DG for AT&SF	$ 16.75
	Do	USY&TCo. and Soo	15.75

	Complainants	Defendants	Amount
	Do	USY&TCo. and MC	.25
	Do	USY&TCo. and C&EI	3.25
	Do	USY&TCo. and DG for C&EI	85.50
	Do	USY&TCo. and DG for MC	1.75
	Do	USY&TCo. and DG for Soo	98.25
	Do	USY&TCo. and DG for NYC	104.50
	Do	USY&TCo. and DG for PCC&StL & Penn	6.00
	Do	USY&TCo. and DG for Wab	64.50
	Do	USY&TCo. and DG for GT	17.25
	Do	USY&TCo. and DG for CI&L	7.50
	Do	USY&TCo. and DG for NYC&StL	2.25
	Do	USY&TCo. and DG for Penn	3.75
	Do	USY&TCo. and DG for CRI&P	308.75
	Do	USY&TCo. and DG for CB&Q	364.75
	Do	USY&TCo. and DG for CM&StP	600.50
	Do	USY&TCo. and DG for IC	56.75
	Do	USY&TCo. and CB&Q	112.50
	Do	USY&TCo. and CRI&P	19.00
	Do	USY&TCo. and IC	2.00
	Do	USY&TCo. and CM&StP	69.75
	Do	USY&TCo. and DG for C&NW	650.00
	Do	USY&TCo. and C&NW	92.00
	Harry Thompson and C. N. Ball copartners trading as Thompson & Ball	USY&TCo. and DG for B&O	9.25
	Do	USY&TCo. and CGW	18.00
	Do	USY&TCo. and DG for C&A	8.00
	Do	USY&TCo. and PM	.25
	Do	USY&TCo. and DG for PM	1.50
	Do	USY&TCo. and DG for CGW	158.75
	Do	USY&TCo. and NYC	.25
	Do	USY&TCo. and DG for AT&SF	1.25
	Do	USY&TCo. and GT	1.75
	Do	USY&TCo. and Penn	5.75
	Do	USY&TCo. and MC	1.75
	Do	USY&TCo. and DG for C&EI	1.50
	Do	USY&TCo. and DG for MC	1.50
	Do	USY&TCo. and DG for NYC	7.75
	Do	USY&TCo. and DG for PCC&StL & Penn	8.25
	Do	USY&TCo. and DG for Wab	2.25
	Do	USY&TCo. and DG for GT	1.75
	Do	USY&TCo. and DG for CI&L	3.50
	Do	USY&TCo. and DG for NYC&StL	1.25
	Do	USY&TCo. and DG for Penn	29.50
	Do	USY&TCo. and DG for CRI&P	182.25
	Do	USY&TCo. and DG for CB&Q	52.25
	Do	USY&TCo. and DG for CM&StP	197.75
391	Do	USY&TCo. and DG for IC	$ 18.50
	Do	USY&TCo. and CB&Q	1.75
	Do	USY&TCo. and CRI&P	31.00
	Do	USY&TCo. and IC	6.50
	Do	USY&TCo. and CM&StP	29.00
	Do	USY&TCo. and C&NW	372.25
	Thos. Tipton, E. M. Steck and W. P. Herrick, copartners trading as Tipton, Steck & Herrick	USY&TCo. and DG for B&O	.25
	Do	USY&TCo. and DG for C&A	4.75

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for AT&SF	17.00
	Do	USY&TCo. and Soo	.75
	Do	USY&TCo. and DG for C&EI	11.50
	Do	USY&TCo. and DG for NYC	.25
	Do	USY&TCo. and DG for Wab	6.00
	Do	USY&TCo. and DG for GT	2.00
	Do	USY&TCo. and DG for CI&L	1.75
	Do	USY&TCo. and DG for Penn	.75
	Do	USY&TCo. and DG for CRI&P	4.00
	Do	USY&TCo. and DG for CB&Q	111.75
	Do	USY&TCo. and DG for CM&StP	8.25
	Do	USY&TCo. and DG for IC	11.25
	Do	USY&TCo. and AT&SF	.75
	Do	USY&TCo. and CB&Q	1.25
	Do	USY&TCo. and CRI&P	1.50
	Do	USY&TCo. and CM&StP	.50
	Do	USY&TCo. and DG for C&NW	15.25
	Do	USY&TCo. and C&NW	2.00
	D. L. Trout and F. L. Trout, copartners trading as Trout Livestock Commission Company	USY&TCo. and DG for B&O	1.00
	Do	USY&TCo. and CGW	.75
	Do	USY&TCo. and C&A	.75
	Do	USY&TCo. and DG for C&A	5.75
	Do	USY&TCo. and DG for Erie	23.50
	Do	USY&TCo. and PM	4.00
	Do	USY&TCo. and DG for PM	11.75
	Do	USY&TCo. and DG for CGW	29.50
	Do	USY&TCo. and NYC	7.50
	Do	USY&TCo. and CI&L	8.25
	Do	USY&TCo. and DG for AT&SF	.50
	Do	USY&TCo. and NYC&StL	.50
	Do	USY&TCo. and GT	1.00
	Do	USY&TCo. and Penn	1.75
	Do	USY&TCo. and C&EI	9.00
	Do	USY&TCo. and DG for C&EI	96.00
	Do	USY&TCo. and DG for MC	.25
	Do	USY&TCo. and DG for Soo	.50
392	Do	USY&TCo. and DG for NYC	$ 124.50
	Do	USY&TCo. and DG for PCC&StL & Penn	45.25
	Do	USY&TCo. and DG for Wab	11.50
	Do	USY&TCo. and DG for C&NW	57.50
	Do	USY&TCo. and C&NW	7.00
	Do	USY&TCo. and DG for GT	9.50
	Do	USY&TCo. and DG for CI&L	196.50
	Do	USY&TCo. and DG for NYC&StL	9.00
	Do	USY&TCo. and DG for Penn	11.50
	Do	USY&TCo. and DG for CRI&P	62.25
	Do	USY&TCo. and DG for CB&Q	34.25
	Do	USY&TCo. and DG for CM&StP	82.00
	Do	USY&TCo. and DG for IC	40.00
	Do	USY&TCo. and CB&Q	6.25
	Do	USY&TCo. and CRI&P	1.00
	Do	USY&TCo. and IC	1.25
	Do	USY&TCo. and CM&StP	8.25
	C. B. Van Norman & Co.	USY&TCo. and DG for B&O	1.75
	Do	USY&TCo. and CGW	6.50
	Do	USY&TCo. and C&A	1.50

	Complainants	Defendants	Amount
	Do	USY&TCo. and DG for C&A	11.50
	Do	USY&TCo. and DG for Erie	3.75
	Do	USY&TCo. and Erie	1.50
	Do	USY&TCo. and DG for CGW	55.25
	Do	USY&TCo. and NYC	.25
	Do	USY&TCo. and DG for AT&SF	14.25
	Do	USY&TCo. and NYC&StL	1.25
	Do	USY&TCo. and Soo	17.00
	Do	USY&TCo. and DG for C&EI	6.00
	Do	USY&TCo. and DG for Soo	13.50
	Do	USY&TCo. and DG for NYC	.50
	Do	USY&TCo. and DG for PCC&StL & Penn	17.00
	Do	USY&TCo. and DG for Wab	1.25
	Do	USY&TCo. and DG for GT	2.25
	Do	USY&TCo. and DG for CI&L	5.00
	Do	USY&TCo. and DG for NYC&StL	12.25
	Do	USY&TCo. and DG for Penn	2.75
	Do	USY&TCo. and DG for CRI&P	31.00
	Do	USY&TCo. and DG for CB&Q	103.00
	Do	USY&TCo. and DG for CM&StP	256.50
	Do	USY&TCo. and DG for IC	118.25
	Do	USY&TCo. and CB&Q	23.75
	Do	USY&TCo. and CRI&P	1.25
	Do	USY&TCo. and IC	18.25
	Do	USY&TCo. and DG for C&NW	191.25
	Van Norman Lawler & Co.	USY&TCo. and DG for B&O	6.50
	Do	USY&TCo. and CGW	28.50
	Do	USY&TCo. and DG for C&A	16.00
	Do	USY&TCo. and DG for Erie	38.50
	Do	USY&TCo. and PM	6.00
	Do	USY&TCo. and Erie	1.50
393	Do	USY&TCo. and DG for PM	$ 83.75
	Do	USY&TCo. and DG for CGW	180.00
	Do	USY&TCo. and NYC	3.75
	Do	USY&TCo. and CI&L	4.25
	Do	USY&TCo. and DG for AT&SF	53.00
	Do	USY&TCo. and PCC&StL & Penn	.50
	Do	USY&TCo. and NYC&StL	1.00
	Do	USY&TCo. and GT	4.00
	Do	USY&TCo. and Penn	2.50
	Do	USY&TCo. and Soo	88.75
	Do	USY&TCo. and MC	3.50
	Do	USY&TCo. and C&EI	.25
	Do	USY&TCo. and DG for C&EI	39.25
	Do	USY&TCo. and DG for MC	9.00
	Do	USY&TCo. and DG for Soo	473.25
	Do	USY&TCo. and DG for NYC	30.25
	Do	USY&TCo. and DG for PCC&StL & Penn	14.00
	Do	USY&TCo. and DG for Wab	35.75
	Do	USY&TCo. and DG for GT	70.75
	Do	USY&TCo. and DG for CI&L	138.25
	Do	USY&TCo. and DG for NYC&StL	18.25
	Do	USY&TCo. and DG for Penn	33.50
	Do	USY&TCo. and DG for CRI&P	143.00
	Do	USY&TCo. and DG for CB&Q	212.00
	Do	USY&TCo. and DG for CM&StP	1405.00
	Do	USY&TCo. and DG for IC	230.00
	Do	USY&TCo. and AT&SF	3.50
	Do	USY&TCo. and CB&Q	20.50

	Complainants	Defendants	Amount
	Do	USY&TCo. and CRI&P	11.25
	Do	USY&TCo. and IC	29.75
	Do	USY&TCo. and CM&StP	402.00
	Do	USY&TCo. and DG for C&NW	1192.50
	Do	USY&TCo. and C&NW	357.75
	W. H. Walter, trading as Walter Bros.	USY&TCo. and DG for B&O	.50
	Do	USY&TCo. and CGW	.50
	Do	USY&TCo. and DG for C&A	38.00
	Do	USY&TCo. and DG for Erie	.75
	Do	USY&TCo. and Wab	.25
	Do	USY&TCo. and DG for PM	1.75
	Do	USY&TCo. and DG for CGW	20.00
	Do	USY&TCo. and DG for AT&SF	27.50
	Do	USY&TCo. and NYC&StL	.50
	Do	USY&TCo. and Soo	11.25
	Do	USY&TCo. and MC	1.75
	Do	USY&TCo. and DG for C&EI	4.75
	Do	USY&TCo. and DG for MC	7.50
	Do	USY&TCo. and DG for Soo	1.50
	Do	USY&TCo. and DG for NYC	5.00
	Do	USY&TCo. and DG for PCC&StL and Penn	1.75
	Do	USY&TCo. and DG for Wab	23.75
	Do	USY&TCo. and DG for GT	1.50
	Do	USY&TCo. and DG for CI&L	2.00
	Do	USY&TCo. and DG for NYC&StL	2.75
	Do	USY&TCo. and DG for Penn	5.75
	Do	USY&TCo. and DG for CRI&P	46.25
	Do	USY&TCo. and DG for CB&Q	89.75
	Do	USY&TCo. and DG for CM&StP	127.50
	Do	USY&TCo. and DG for IC	37.00
	De	USY&TCo. and AT&SF	7.25
	Do	USY&TCo. and CB&Q	5.75
394	Do	USY&TCo. and CRI&P	$ 6.75
	Do	USY&TCo. and IC	1.25
	Do	USY&TCo. and CM&StP	26.50
	Do	USY&TCo. and DG for C&NW	126.00
	Do	USY&TCo. and C&NW	26.25
	A. A. Walters, C. A. Dunbar and J. H. Dunbar, co-partners trading as Walter & Dunbar	USY&TCo. and DG for B&O	7.75
	Do	USY&TCo. and CGW	9.00
	Do	USY&TCo. and C&A	1.75
	Do	USY&TCo. and DG for C&A	82.50
	Do	USY&TCo. and DG for Erie	27.25
	Do	USY&TCo. and PM	.50
	Do	USY&TCo. and DG for PM	3.75
	Do	USY&TCo. and DG for CGW	177.50
	Do	USY&TCo. and NYC	6.00
	Do	USY&TCo. and CI&L	1.25
	Do	USY&TCo. and DG for AT&SF	81.50
	Do	USY&TCo. and PCC&StL and Penn	.50
	Do	USY&TCo. and NYC&StL	.75
	Do	USY&TCo. and Penn	6.00
	Do	USY&TCo. and Soo	32.75
	Do	USY&TCo. and C&EI	7.00
	Do	USY&TCo. and DG for C&EI	64.25
	Do	USY&TCo. and DG for MC	7.00

Complainants	Defendants	Amount
Do	USY&TCo. and DG for Soo	127.25
Do	USY&TCo. and DG for NYC	63.00
Do	USY&TCo. and DG for PCC&StL and Penn	16.75
Do	USY&TCo. and DG for Wab	67.25
Do	USY&TCo. and DG for GT	11.00
Do	USY&TCo. and DG for CI&L	45.50
Do	USY&TCo. and DG for NYC&StL	14.25
Do	USY&TCo. and DG for Penn	26.75
Do	USY&TCo. and DG for CRI&P	322.25
Do	USY&TCo. and DG for CB&Q	756.00
Do	USY&TCo. and DG for CM&StP	731.00
Do	USY&TCo. and DG for IC	123.00
Do	USY&TCo. and AT&SF	8.00
Do	USY&TCo. and CB&Q	266.50
Do	USY&TCo. and CRI&P	37.00
Do	USY&TCo. and IC	9.50
Do	USY&TCo. and CM&StP	181.75
Do	USY&TCo. and DG for C&NW	860.50
Do	USY&TCo. and C&NW	155.00
L. B. Werden	USY&TCo. and C&A	.25
Do	USY&TCo. and DG for C&A	1.75
Do	USY&TCo. and Soo	1.25
Do	USY&TCo. and DG for Soo	13.75
Do	USY&TCo. and DG for Wab	.75
Do	USY&TCo. and DG for CRI&P	3.25
Do	USY&TCo. and DG for CB&Q	17.25
Do	USY&TCo. and DG for CM&StP	595.00
Do	USY&TCo. and DG for IC	7.50
Do	USY&TCo. and CB&Q	4.25
Do	USY&TCo. and CRI&P	.75
Do	USY&TCo. and CM&StP	12.25
Do	USY&TCo. and DG for C&NW	9.50
Do	USY&TCo. and C&NW	1.00
395 W. W. Wilson and Chas. A. Wilson, copartners trading as W. W. Wilson & Company	USY&TCo. and DG for B&O	$ .25
Do	USY&TCo. and CGW	22.25
Do	USY&TCo. and C&A	8.25
Do	USY&TCo. and DG for C&A	17.00
Do	USY&TCo. and DG for Erie	.25
Do	USY&TCo. and PM	.50
Do	USY&TCo. and DG for MP	.25
Do	USY&TCo. and DG for CGW	188.75
Do	USY&TCo. and NYC	2.25
Do	USY&TCo. and CI&L	.75
Do	USY&TCo. and DG for AT&SF	16.00
Do	USY&TCo. and PCC&StL and Penn	1.75
Do	USY&TCo. and NYC&StL	.75
Do	USY&TCo. and Penn	1.25
Do	USY&TCo. and Soo	17.00
Do	USY&TCo. and C&EI	2.25
Do	USY&TCo. and DG for C&EI	7.25
Do	USY&TCo. and DG for MC	.25
Do	USY&TCo. and DG for Soo	19.00
Do	USY&TCo. and DG for NYC	3.00
Do	USY&TCo. and DG for PCC&StL and Penn	3.00
Do	USY&TCo. and DG for Wab	30.00
Do	USY&TCo. and DG for GT	.25

Complainants	Defendants	Amount
Do	USY&TCo. and DG for CI&L	11.50
Do	USY&TCo. and DG for NYC&StL	1.00
Do	USY&TCo. and DG for Penn	3.25
Do	USY&TCo. and DG for CRI&P	366.25
Do	USY&TCo. and DG for CB&Q	126.50
Do	USY&TCo. and DG for IC	141.50
Do	USY&TCo. and AT&SF	7.50
Do	USY&TCo. and CB&Q	46.75
Do	USY&TCo. and CRI&P	57.00
Do	USY&TCo. and IC	12.00
Do	USY&TCo. and CM&StP	166.25
Do	USY&TCo. and DG for C&NW	575.25
Do	USY&TCo. and C&NW	89.75
Jet Wimp, trading as Jet Wimp & Company	USY&TCo. and DG for Erie	.75
Do	USY&TCo. and DG for AT&SF	70.50
Do	USY&TCo. and DG for Wab	6.75
Do	USY&TCo. and DG for CRI&P	2.00
Do	USY&TCo. and DG for CB&Q	205.50
Do	USY&TCo. and DG for CM&StP	12.00
Do	USY&TCo. and CB&Q	34.00
Do	USY&TCo. and CRI&P	.25
Do	USY&TCo. and DG for C&NW	17.75
Do	USY&TCo. and C&NW	1.50
Kay Wood and Chas. A. Wood, copartners trading as Wood Bros.	USY&TCo. and DG for B&O	6.50
Do	USY&TCo. and CGW	19.50
Do	USY&TCo. and C&A	.50
Do	USY&TCo. and DG for C&A	85.75
Do	USY&TCo. and DG for Erie	3.50
Do	USY&TCo. and PM	.25
Do	USY&TCo. and Erie	2.50
396 Do	USY&TCo. and Wab	$ 1.00
Do	USY&TCo. and DG for PM	3.00
Do	USY&TCo. and DG for CGW	199.75
Do	USY&TCo. and NYC	13.75
Do	USY&TCo. and CI&L	4.25
Do	USY&TCo. and DG for AT&SF	122.75
Do	USY&TCo. and GT	1.25
Do	USY&TCo. and Penn	.25
Do	USY&TCo. and Soo	56.00
Do	USY&TCo. and MC	2.75
Do	USY&TCo. and C&EI	3.25
Do	USY&TCo. and DG for C&EI	124.25
Do	USY&TCo. and DG for MC	9.25
Do	USY&TCo. and DG for Soo	142.00
Do	USY&TCo. and DG for NYC	31.25
Do	USY&TCo. and DG for PCC&StL and Penn.	24.75
Do	USY&TCo. and DG for Wab	84.75
Do	USY&TCo. and DG for GT	3.50
Do	USY&TCo. and DG for CI&L	83.25
Do	USY&TCo. and DG for NYC&StL	.50
Do	USY&TCo. and DG for Penn	4.50
Do	USY&TCo. and DG for CRI&P	560.50
Do	USY&TCo. and DG for CB&Q	534.25
Do	USY&TCo. and DG for CM&StP	1097.25
Do	USY&TCo. and DG for IC	339.00
Do	USY&TCo. and AT&SF	7.75

Complainants	Defendants	Amount
Do	USY&TCo. and CB&Q	207.50
Do	USY&TCo. and CRI&P	55.75
Do	USY&TCo. and IC	28.75
Do	USY&TCo. and CM&StP	184.00
Do	USY&TCo. and DG for C&NW	1074.50
Do	USY&TCo. and C&NW	244.50
Curtis A. Wood and Walter R. Wood, copartners trading as Curtis A. Wood & Company	USY&TCo. and CGW	.50
Do	USY&TCo. and DG for PM	.25
Do	USY&TCo. and DG for CGW	3.75
Do	USY&TCo. and DG for AT&SF	.25
Do	USY&TCo. and DG for C&EI	3.00
Do	USY&TCo. and DG for Soo	1.75
Do	USY&TCo. and DG for GT	2.00
Do	USY&TCo. and DG for NYC&StL	.50
Do	USY&TCo. and DG for Penn	.25
Do	USY&TCo. and DG for CRI&P	29.25
Do	USY&TCo. and DG for CB&Q	14.00
Do	USY&TCo. and DG for CM&StP	191.25
Do	USY&TCo. and DG for IC	65.25
Do	USY&TCo. and AT&SF	.75
Do	USY&TCo. and CB&Q	4.00
Do	USY&TCo. and CRI&P	3.00
Do	USY&TCo. and IC	.75
Do	USY&TCo. and CM&StP	19.50
Do	USY&TCo. and DG for C&NW	279.25
Do	USY&TCo. and C&NW	38.00
397 L. B. Yancey	USY&TCo. and CGW	$ .75
Do	USY&TCo. and DG for C&A	.75
Do	USY&TCo. and DG for Erie	.75
Do	USY&TCo. and DG for PM	.25
Do	USY&TCo. and DG for CGW	10.50
Do	USY&TCo. and DG for MC	.25
Do	USY&TCo. and DG for PCC&StL and Penn	1.00
Do	USY&TCo. and DG for GT	.25
Do	USY&TCo. and DG for NYC&StL	.75
Do	USY&TCo. and DG for Penn	6.50
Do	USY&TCo. and DG for CRI&P	54.25
Do	USY&TCo. and DG for CB&Q	14.00
Do	USY&TCo. and DG for CM&StP	151.50
Do	USY&TCo. and DG for IC	8.00
Do	USY&TCo. and CB&Q	.50
Do	USY&TCo. and CRI&P	6.75
Do	USY&TCo. and IC	1.25
Do	USY&TCo. and CM&StP	20.75
Do	USY&TCo. and DG for C&NW	70.25
Do	USY&TCo. and C&NW	15.75
W. E. Young, trading as W. E. Young & Company	USY&TCo. and DG for B&O	1.25
Do	USY&TCo. and CGW	1.50
Do	USY&TCo. and DG for C&A	1.25
Do	USY&TCo. and PM	.25
Do	USY&TCo. and DG for PM	1.75
Do	USY&TCo. and DG for CGW	11.00
Do	USY&TCo. and NYC	.75
Do	USY&TCo. and PCC&StL and Penn	.25
Do	USY&TCo. and Penn	.25

Complainants	Defendants	Amount
Do	USY&TCo. and Soo	.50
Do	USY&TCo. and MC	1.00
Do	USY&TCo. and DG for C&EI	2.00
Do	USY&TCo. and DG for MC	.25
Do	USY&TCo. and DG for Soo	.50
Do	USY&TCo. and DG for NYC	2.75
Do	USY&TCo. and DG for PCC&StL and Penn	3.75
Do	USY&TCo. and DG for Wab	25.25
Do	USY&TCo. and DG for CI&L	20.25
Do	USY&TCo. and DG for NYC&StL	.25
Do	USY&TCo. and DG for Penn	6.00
Do	USY&TCo. and DG for CRI&P	13.75
Do	USY&TCo. and DG for CB&Q	26.00
Do	USY&TCo. and DG for CM&StP	33.50
Do	USY&TCo. and DG for IC	1.75
Do	USY&TCo. and CB&Q	3.50
Do	USY&TCo. and CRI&P	2.25
Do	USY&TCo. and IC	1.00
Do	USY&TCo. and CM&StP	10.25
Do	USY&TCo. and DG for C&NW	47.50
Do	USY&TCo. and C&NW	9.25

398 It Is Therefore Ordered, That the defendants named in each of the groups shown in the above table be, and they are hereby, authorized and directed to pay unto the complainants shown opposite said groups, on or before January 26th, 1928, the amounts set opposite their respective names in said table, with interest thereon at the rate of six per cent per annum from the respective dates of payment of the charges assailed shown in the aforesaid agreed statements, as reparation on account of the unlawful collection of separate charges, in addition to the line haul rates, for loading and unloading of interstate shipments of ordinary livestock, in carloads, at the Chicago stockyards.

By the commission.

GEORGE B. MCGINTY,
Secretary.

(Seal)

399 INDEX TO ABBREVIATIONS.

A. T. & S. F.—The Atchison, Topeka & Santa Fe Railway Co.
B. & O.—The Baltimore & Ohio R. R. Co.
C. & O.—The Chesapeake & Ohio Ry. Co. of Indiana.
C. & A.—The Chicago & Alton R. R. Co.
C. & E. I.—Chicago & Eastern Illinois R. R. Co., and W. J. Jackson, Receiver.
C. & N. W.—Chicago & North Western Ry. Co.
C. B. & Q.—Chicago, Burlington & Quincy R. R. Co.
C. G. W.—Chicago Great Western R. R. Co.

C. I. & L.—Chicago, Indianapolis & Louisville Ry. Co.
C. J. Ry.—Chicago Junction Ry. Co.
C. M. & St. P.—Chicago, Milwaukee & St. Paul Ry. Co.
C. R. I. & P.—The Chicago, Rock Island & Pacific Ry. Co.
C. T. H. & S. E.—Chicago, Terre Haute & Southeastern Ry. Co.
C. C. C. & St. L.—The Cleveland, Cincinnati, Chicago and St. Louis Ry. Co.
G. T.—Grand Trunk Ry. Co.
I. C.—Illinois Central R. R. Co.
I. H. B.—Indiana Harbor Belt R. R. Co.
M. C.—The Michigan Central R. R. Co.
Soo—Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.
N. Y. C.—The New York Central R. R. Co.
N. Y. C. & St. L.—The New York, Chicago & St. Louis R. R. Co.
Penn.—The Pennsylvania R. R. Co.
Penn. W. L.—The Pennsylvania R. R. Co. Western Lines.
P. M.—Pere Marquette Ry. Co.
P. C. C. & St. L.—The Pittsburgh, Cincinnati, Chicago & St. Louis R. R. Co.
T. St. L. & W.—Toledo, St. Louis & Western R. R. Co.
U. S. Y. & T. Co.—Union Stock Yard & Transit Co.
Wab.—Wabash Ry. Co.
D. G. for Andrew W. Mellon, Director General of Railroads, as Agent of the President under section 206 of the Transportation Act, 1920, defendant herein pursuant to said section in respect of the • • •

400 Mr. Towner: It will be stipulated between the parties that in connection with Plaintiffs' Exhibit 4 this suit is not brought to recover any amount except those amounts that are preceded by the designation "U. S. Y. and T. Co. and D. G." for some railroad.

It is also stipulated that on Exhibit 4 all amounts which are not preceded by the initials "D. G." are not involved in this case. Is that agreeable?

Mr. Godman: That is true.

Mr. Godman: I offer as Plaintiffs' Exhibit 5 the order of the Interstate Commerce Commission decided and rendered May 14, 1928, *Chicago Live Stock Exchange* v. *Atchison, Topeka and Santa Fe Railway Company*, reported in 144 I. C. C. 175.

Mr. Towner: No objection.

The Court: It may be admitted.

Whereupon said document, marked Plaintiffs' Exhibit 5, was received in evidence, and is in the words and figures following, to-wit:

Pls' Ex. 5. 401

PLAINTIFFS' EXHIBIT 5.

ADP

INTERSTATE COMMERCE COMMISSION.

No. 9977[1]

Chicago Live Stock Exchange v. *Atchison, Topeka & Santa Fe Railway Company et al.*

Decided May 14, 1928

Order awarding reparation on account of the unlawful collection of separate charges for the loading and unloading of livestock, in carloads, at the Chicago stockyards under former decisions, 58 I. C. C. 164 and 100 I. C. C. 266, modified. Appearances shown in former reports.

Supplemental Report of the Commission.

By the Commission:

On December 12, 1927, we issued an order directing defendants to pay specified amounts of reparation to certain of the parties listed in our previous report, on further hearing, 100 I. C. C. 266. In that report, supplementing our former report, we found that the collection of separate charges from complainants and interveners for the service of unloading and loading interstate shipments of ordinary livestock at the Chicago, Ill., stockyards, in addition to the line-haul rates on such livestock, between May 21, 1917, and April 1, 1920, and intrastate shipments during the period of Federal con-

[1] This report also embraces No. 12614, *Chicago Live Stock Exchange et al. v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.*

trol, was an unlawful and unreasonable practice. We there said:

The foregoing complainants and interveners found entitled to reparation should severally prepare statements in accordance with Rule V of the Rules of Practice, separated as to participating defendant carriers, including as a defendant, the stockyard company and also including the Director General of Railroads, as agent, in appropriate cases in No. 12614. The statements should be submitted to the appropriate defendants for verification. If not so verified within a reasonable time, they should be filed here for check upon the record, with a view to the entry of an order awarding reparation.

The Director General of Railroads, as agent, and the Union Stock Yard & Transit Company having refused to verify the Rule V statements submitted to them, complainants filed with us statements, in some instances copies of original Rule V statements, containing the essential information called for by Rule V of the Rules of Practice except the dates on which the charges were paid. Many of these statements were verified by the defendant carriers. Subsequently complainants filed with us tabulated statements in which were embodied in convenient form, summaries, separated as to participating defendants, of the numbers of shipments received by, and amounts of reparation due to, each of the parties shown in the detailed statements previously filed. After these summaries had been checked upon the record, we issued the aforementioned order of December 12, 1927.

This order contained the following recital:

the parties having filed agreed statements with respect to the shipments in question, showing, among other things, the dates on which payment of the charge assailed was made * * *.

In respect of all shipments, "agreed" statements were not filed. Also, the statements which were filed do not show the "dates on which the payment of the charges assailed was made." They do show, however, the dates of unloading or loading at Chicago, and a competent witness testified that, following the practice which grew out of the tremendous volume of livestock received daily at Chicago, "the Union Stock Yard & Transit Company * * * submits to the commission merchant twice a week a statement of all of the charges due from that commission merchant, the commission firm paying to the Union Stock Yard & Transit Company said freight charges." A similar practice obtained in respect of loading

charges prepaid at Chicago. Thus the record shows with reasonable certainty, if not the exact dates upon which, at least the period within which, the charges assailed were paid. Under the circumstances we find that a fair method of determining interest periods would be to compute the interest from the grst of the month next succeeding the dates of unloading or loading of the livestock at Chicago.

The names of the three following parties, (1) G. B. Van Norman, individual trading as G. B. Van Norman & Company, (2) Miller, White & Wood, and (3) O. D. Freeland and C. M. Godfrey, copartners trading as Freeland & Godfrey, were incorrectly shown in our order of December 12, 1927. These errors will be corrected.

An order will be entered making the necessary modifications in our order of December 12, 1927.

402 ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of May, A. D. 1928.

No. 9977

The Chicago Live Stock Exchange

v.

The Atchison, Topeka & Santa Fe Railway Company *et al.*

No. 12614

Same

v.

Director General, as Agent, The Atchison, Topeka & Santa Fe Railway Company, *et al.*

It Appearing, That on February 11, 1919, the commission entered its report, on July 15, 1920, and Jul 2, 1925, its reports on further hearings, and on December 12, 1927, its order in the above-entitled proceedings, and the commission having further considered its order of December 12, 1927, and, on the date hereof, made and filed a report containing its findings of fact and conclusions in regard thereto, which said report and

the reports of February 11, 1919, July 15, 1920, and June 2, 1925, and order of December 12, 1927, are hereby referred to and made a part hereof:

It Is Ordered, That the first paragraph of said order of December 12, 1927, be, and it is hereby, modified to read as follows:

It Appearing, That on February 11, 1919, the commission entered its report, and on July 15, 1920, and June 2, 1925, its reports on further hearings in the above-entitled proceedings, which reports are hereby referred to and made a part hereof, and these proceedings now coming on for further consideration on the question of reparation, and complainants having filed statements with respect to the shipments in question; we find that complainants shown in the following table are entitled to awards of reparation from the defendants named below in the amounts set opposite their respective names, with interest:

It Is Further Ordered, That on sheet 20 of said order of December 12, 1927, "O. O. Freeland" be, and it is hereby, changed to "O. D. Freeland"; that on sheet 30 of said order "Muller, White & Woods" be, and it is hereby, changed to "Miller, White & Woods"; and that on sheet 49 of said order "C. B. Van Norman & Co." be, and it is hereby, changed to "G. B. Van Norman, individual trading as G. B. Van Norman & Company."

It Is Further Ordered, That the concluding paragraph of said order of December 12, 1927, be, and it is hereby, modified to read as follows:

It Is Therefore Ordered, That the defendants named in each of the groups shown in the above table be, and they are hereby, authorized and directed to pay unto the complainants shown opposite said groups, on or before August 10, 1928, the amounts set opposite their respective names in said table, with interest thereon at the rate of 6 per cent per annum from the first day of the month next succeeding the dates on which the shipments in question were unloaded or loaded at the Chicago stockyards, as reparation on account of the unlawful collection of separate charges, in addition to the line-haul rates, for the loading and unloading of shipments of ordinary livestock, in carloads, at the Chicago stockyards.

And It Is Further Ordered, That in all other respects the said order of December 12, 1927, shall remain in full force and effect.

By the commission.

GEORGE B. MCGINTY,
Secretary.

(Seal)

403 Mr. Godman: I offer in evidence as Plaintiffs' Exhibit 6 an order of the Interstate Commerce Commission entered on the 27th day of November, 1928, in cases No. 9977 and No. 12614.

Mr. McLaughlin: No objection.

Mr. Towner: No objection.

The Court: It may be admitted. This merely corrects typographical errors in the preceding order.

Mr. Godman: Yes, Your Honor, Plaintiffs' Exhibit 6 is a correction by the Commission of certain typographical errors and several of the names which are made in a prior order.

Whereupon said document, marked Plaintiffs' Exhibit 6, was received in evidence, and is in the words and figures following, to-wit:

Ex. 404 PLAINTIFFS' EXHIBIT 6.

ADP

Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 27th day of November, A. D. 1928.

No. 9977

The Chicago Live Stock Exchange

v.

The Atchison, Topeka & Santa Fe Railway Company *et al.*

No. 12614

Same

v.

Director General, as Agent, The Atchison, Topeka & Santa Fe Railway Company *et al.*

It Appearing, That on December 12, 1927, the commission entered its order in the above-entitled proceeding, and this

proceeding now coming on for further consideration which has been had, and good cause appearing therefore:

It Is Ordered, That the said order entered herein on December 12, 1927, be, and it is hereby, amended nunc pro tunc by striking out the following:

Fred L. Heyne and D. H. Baker, copartners trading as Baker Heyne & Company

Wm. B. Swinney, Chas. M. Swinney and Thos. E. Swinney, copartners trading as Swinney Bros., successors to Brunker & Swinney

Wm. Gentleman, A. M. Gentleman, C. F. Gentleman and J. G. Gentleman, copartners trading as Wm. Gentleman & Sons.

Knollen Sheep Commission Company

Rosenbaum & Company

W. R. Smith, J. C. Eastes and John Smith, copartners trading as W. R. Smith & Company

Chas. E. Stephens and J. A. Goble, copartners trading as Stephens & Goble

A. Gilmore, C. L. Swanson and C. J. Castenhold, copartners trading as Swanson, Gilmore & Castenhold.

And inserting in lieu thereof the following:

Fred L. Heyne and E. H. Baker, copartners trading as Baker Heyne & Company

Wm. B. Swiney, Chas. M. Swiney and Thos. E. Swiney, copartners trading as Swiney Bros., successors to Bunker & Swiney

Wm. Gentleman, A. M. Gentleman, C. F. Gentleman and G. J. Gentleman, copartners trading as Wm. Gentleman & Sons

Knollin Sheep Commission Company

Rosenbaum Brothers & Company

405 W. R. Smith, J. C. Eastes and John Smith, copartners trading as W. R. Smith & Son

Chas. H. Stephens and J. A. Goble, copartners trading as Stephens & Goble

A. Gilmore, C. L. Swanson and C. J. Castenholz, copartners trading as Swanson, Gilmore & Castenholz.

but that in all other respects the said order shall continue in full force and effect.

By the commission:

GEORGE B. MCGINTY,
Secretary.

(Seal)

406 Thereupon the witness HENRY R. PARK, called on behalf of the plaintiffs, having been duly sworn, was examined in chief by Mr. Godman, and testified as follows:

Direct Examination.

My name is Henry R. Park. I live at 9339 Longwood Drive, Chicago, Illinois. I am Traffic Manager of the Chicago Live Stock Exchange, Union Stock Yards, Chicago, Illinois. I have been such Traffic Manager since May 1, 1919. As Traffic Manager of the Chicago Live Stock Exchange my duties are to take care of all the matters pertaining to the handling of live stock into and out of the Stock Yards at Chicago for the members of the Chicago Live Stock Exchange, that is, of the Live Stock Commission, the commission merchants doing business, receiving and shipping live stock into and out of the Yards, that are members of the Chicago Live Stock Exchange, and their clients, the people for whom they do business. There are approximately one hundred firms members of the Chicago Live Stock Exchange. I would estimate that there are about four hundred fifty individual members. These live stock commission men buy and sell cattle and sheep and hogs on the public market in the Union Stock Yards on commission.

Q. Your work as Traffic Manager, have you to do with the filing and handling of claims on behalf of these live stock commission men?

A. Those are my duties; that is, the handling of claims and complaints, claims covering loss and damage, overcharge, reparation, complaints of any and all kinds that arise on account of difficulties encountered by shippers or receivers of live stock into and out of the Yards.

Q. During the period covered by our declaration here, involved in this law suit, how were freight payments and
407 collections made with respect to the business of the live stock commission men? Tell us how that was done, who presented the bills, who made the payments, etc., in respect to the live stock business coming into the stock yards and leaving the yards.

A. The bills for the freight charges were presented by the Union Stock Yards and Transit Company to the members of our Exchange, and paid by the members of our Exchange to the Union Stock Yards and Transit Company.

Included in those freight bills were the amount of freight

charges, terminal charges, and the amount involved here, and unloading charges of twenty-five cents per car on the inbound shipments.

Q. On the outbound shipments how much per car?

A. Outbound shipments as a rule would be fifty cents per car—I beg your pardon, twenty-five cents in addition to the freight rate.

Q. In addition?

A. Yes, and unless prepaid would be paid by consignee at destination, at some point other than the Chicago Stock Yards.

Q. Now, was there any part of the loading and unloading service charge absorbed by the railroad companies as part of their tariff?

A. Yes, sir.

Q. How much?

A. At least twenty-five cents of the total charge of fifty cents were absorbed by the railroad companies.

Q. What part of the seventy-five cent charge?

A. Fifty cents.

Q. So that the shipper then paid, or the receiver, the commission men at the Yards, twenty-five cents in the case of unloading, and fifty cents in the case of loading?

408 A. Twenty-five cents in each instance.

Q. Twenty-five cents in each instance?

A. Yes, sir.

Q. In addition to these published freight rates?

A. Yes, sir. This loading and unloading charge has always been absorbed by the railroad companies back as far as I can remember, and daily reports are back into the inception of the Yards, and that was in 1867. Federal control commenced December 26, 1917, and continued until March 1, 1920, at 12:01 A. M.

Q. The line haul carriers then passed under the control of the Director General of Railroads?

A. Passed from the control; on December 28, 1917, the railroads of the country passed into the control of the Director General; on March 1, 1920, passed from the control of the Director General to the private corporations owning the railroads.

Q. Under federal control, from your contacts and experience with railroad companies, was there any change in the personnel, that is to say, did the Director General take over the organization of the railroads as they existed at that time and continue the same force of employees?

A. Practically so, Mr. Godman, in general. The change at the Yards was this, that prior—at a certain time in 1918, I think it was the railroads out there all consolidated their agencies, that is up to that point each railroad had its own individual agent doing business, handling their matters, and then at that point, I think it was the early part of 1918, they consolidated and appointed what was then called a join agent, and joint offices, handling all the matters for all the railroads in the Chicago Stock Yards district.

409 Q. And after the railroads were taken over by the Director General and operated under his supervision and management as the agent of the President of the United States, the work went on in practically the same way as it had been, so far as your shippers were concerned?

A. Yes, absolutely; there was no difference in the general handling of the traffic. This one move that I refer to was made simply as a point of economy on the part of the Director General, in order to consolidate and eliminate extra help.

The employees of the railroad corporations thus taken under Federal control became employees of the Director General of Railroads.

Q. Now, during the period of Federal control, which you have indicated by dates, did the Director General of Railroads absorb, as the railroads had theretofore, any part of this loading and unloading charge?

A. The Director General continued, after December 28, 1917, to absorb twenty-five cents of the total charge of fifty cents on unloading, and the Director continued to absorb fifty cents of the total of seventy-five cents on the loading charge, just leaving the unabsorbed portion of twenty-five cents of the into or unloaded stock, and twenty-five cents of the unabsorbed of the loaded or outbound stock.

This increase of twenty-five cents per car was made May 31, 1917.

Q. And how long did that continue?

A. The tariffs were made effective March 1, 1920, discontinuing the charge, but there was some difficulty with some of the lines so that the charge actually was collected by some of the lines from some of our members during the month of March, 1920.

Mr. Towner: Wait a moment on that before you leave
410 it. You mean that the charge sof the Stock Yards Company were discontinued on March 20th?

The Witness: No, I mean, Mr. Towner, effective March

1, 1920, that at that time the railroads went back into the hands of the private owners, the railroads had a proper tariff during that time providing for the absorption of the total amount of loading and unloading charge of the Stock Yards Companies.

Mr. Towner: There was no change made in the amount of these charges, however, was there?

The Witness: Not on that particular date. There was a little subsequent, the charge was increased, but not at that time.

Mr. Godman: Q. The date you have just indicated, March 1, 1920, the Line Haul Carriers had paid whatever had been paid to the Union Stock Yards and Transit Company for this loading and unloading service?

A. Yes, sir.

Q. And they collected it as part of the freight?

A. With the exception, Mr. Godman, that I made, that due to some misunderstanding on the part of some of the railroads during the month of March, and particularly during the early part of March, they did continue to collect the unabsorbed portion, which was an error on their part, and it is really not involved here, but I am stating it in order to get all the facts in.

From that date, with the exception indicated, the railroads have provided this loading and unloading service through the Union Stock Yards and Transit Company, without charge to the shipper or the commission men, excepting the charge made for the through haul. I was familiar with this case when it
was pending before the Interstate Commerce Commis-
411 sion. The claims of the various clients that I speak of were
prepared in my office jointly and in the office of the commission firms, either by myself or under my direct personal supervision. I knew the contents of the claims and verified them. The claims thus prepared by me, or under my supervision, were the claims introduced before the Interstate Commerce Commission in hearings 9977 and 12614, and I there testified, and here testify, that they were made directly by me or under my direct personal supervision, from the records of the commission firms.

I am familiar and acquainted with the persons and the companies named as plaintiffs in this case now on trial, and they are the same persons and plaintiffs who are named in Plaintiffs' Exhibit 4, the order of the Interstate Commerce Commission, as entitled to reparation. I know that of my own knowledge.

Mr. Godman: Q. Did you compile a record or a statement showing the car numbers, the dates of delivery, the contents of the car, the date of shipment and so on, for presentation to the Interstate Commerce Commission, in 9977 and 12614?

A. I did, yes, sir.

Q. And was such a statement filed with the Commission?

A. It was, yes, sir.

Q. From what did you make that statement up?

A. From the original records of the Commission firms, wherein their records are kept, showing the amount of freight charges and the different items paid to the Stock Yards companies on these shipments.

Q. What was the aggregate total paid by the plaintiffs in this cause to the Union Stock Yards & Transit Co., or the Director General of Railroads, if you know, or either of them, for this loading and unloading service?

412 Mr. Towner: I object to the question, if the court please, on the ground that knowledge of the witness is secondary, based upon records concerning which there has been no testimony, and they are not produced here, and consequently it is hearsay.

Mr. McLaughlin: We join in that objection.

The Court: I think it is subject to that objection, and I will sustain the objection.

Mr. Godman: You gentlemen have here the records of the Interstate Commerce Commission, have you?

Mr. Towner: I might add, if your Honor please, and not intending to interfere with Mr. Godman's examination, but for the purpose of clarity, we have present—I say we—the defendants have present in this court a complete record before the Interstate Commerce Commission, which includes the documents that I assume Mr. Park has just undertaken to testify about, and it is our intention to offer them in evidence, after the plaintiffs rest.

Mr. Godman: Well, I will offer that statement now, if you gentlemen will produce it.

Mr. McLaughlin: Well, it is Adams' Exhibit 1-A, isn't it, Mr. Park?

The Court: That is a good way to get at it.

Mr. Towner: Let me ask Mr. Park one question:

Q. This statement you have just testified about, Mr. Park, is that the statement that was introduced in the hearings before the Commission upon the hearing of October 3, 1922, and which was marked by the Commission Exhibit 1-A, was it not?

The Witness: Yes, sir.

Mr. Towner: Q. And you have turned over to me a copy of that exhibit, haven't you?

Mr. Park: I have.

413 Mr. Towner: Q. And is contained in that coffin-like box over there, isn't it?

A. It is.

Mr. Towner: Q. That is available for introduction if you wish.

Mr. Godman: If you will produce it.

Mr. Towner: Well, there it is.

Mr. Godman: You raised the objection; I was trying to get at this in a short way, but you want the statement in, and let us put it in.

Mr. Towner: I am not introducing this. I understood Mr. Godman wished to put it in, and if he does, there it is available for introduction by him.

Mr. Godman: May I have it?

Mr. Towner: Sure.

Mr. Godman: I have never had the box.

Mr. McLaughlin: The keys to the box, your witness has the key to the box. We simply have possession of the box.

Mr. Godman: You have the box and we have the keys.

Mr. Towner: The Stock Yards Company furnished the box and the lock, and Mr. Park furnished the exhibit.

Mr. McLaughlin: And kept the keys.

Mr. Towner: And then the exhibit was deposited in the box, and the lock was locked, and Mr. Park has the key.

Mr. Godman: I will ask the witness to get the statements; if you are insisting upon your technical objection; that is the only way I can offer it.

Mr. Towner: Very well.

Mr. Godman: Will you get it, Mr. Park?

The Witness: With the help of another man.

Mr. McLaughlin: We will help you.

414 Mr. Godman: You raised the objection, and I am not to be criticized for putting it in. I wanted to get a summary of that entire matter.

The Witness: Here they are (indicating).

Mr. Godman: Are those the statements which you prepared, Mr. Park?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. You are familiar with those statements?
A. Yes, sir.
Q. And have first-hand knowledge of them?
A. Yes, sir.
Q. State, if you please, Mr. Park, how many carloads of shipments are accounted for in this chest, which you have now identified as Exhibit 1-A, which was before the Interstate Commerce Commission?

Mr. Towner: Now, your Honor, please, I have an objection to that. The objection is this: That this document was introduced in the hearings before the Commission; the Yards company made very strenuous objection to it on account of its incompetency, on the ground that it had not been properly proven, on the ground that the records upon which it was based were not records of the Yards company, had not been produced, nor had they been identified by any witness who had knowledge of the facts. That objection before the Commission was overruled, and the fact that it was overruled forms one ground of attack which we propose to make upon the Commission's order. The witness is now asked to testify, upon the same faulty premise, to the same conclusion, that the Commission permitted him to testify in the hearings before it. We have the same objection to the evidence that was had before the Commission, namely, that the witness has no personal knowledge of the facts; that his evidence is
415 based upon records which have not been proven, nor produced; that it is secondary evidence, and it is hearsay, and is not competent to bind my client.

Mr. McLaughlin: We object, on the further ground that the document itself has not yet been offered in evidence, and therefore it is improper to show the compilations or the result of the figures contained in that document until after the document has been offered in evidence.

Mr. Godman: The question I am asking the witness is merely to state whether he knows how many carloads of shipments were involved in this hearing before the Interstate Commerce Commission, where these plaintiffs were awarded a reparation, just the number of carloads, if he knows; he is the Traffic Manager there.

Mr. Towner: That question, however, your Honor, if that is what the question is, I though it went further than that—

Mr. Godman: Then I will withdraw that and ask that question.

Mr. Towner: That does not cure the objection because the

witness' knowledge of the facts, even as testified to by him, rests, as I say, upon an examination of the records of the multitudinous Commission men's records which have not been produced, either here or before the Commission, concerning which there is no testimony. Mr. Park might testify as to what these records show, but even if he did that it could have no legal effect in the absence of some identification and proof as to the correctness of the record. I therefore make the same objection upon the same grounds.

Mr. McLaughlin: And I join in it.

The Court: I will overrule the objection.

Mr. Towner: Exception.

The Court: He may answer.

Mr. Godman: You may state.

416 The Witness: A. 560005 cars.

Mr. Godman: Q. Did you compute the aggregate amount of the loading and unloading service charge which was made on that number of carload shipments?

A. That is, I assume, Mr. Godman, you mean over and above the tariff amount?

Q. Yes, the excess charge.

A. In other words, the excess charges?

Q. Yes.

A. Yes, sir. That is 140—

Q. I asked you if you had computed them?

A. I have, yes, sir.

Q. State what they amounted to.

Mr. Towner: I object to the question on the same ground that I objected to the previous question, namely, not based upon the witness' knowledge, and shown to be based on evidence, not proven, not produced, secondary, hearsay, and not competent to bind my client.

The Court: Overruled.

Mr. Towner: Exception.

The Witness: A. $140,001.25.

The period covered by those items was from December 28, 1917, to March 1, 1920. I am familiar with the manner in which the loading and unloading service is performed by the Union Stock Yards. During the period about which I have been questioned, when these shipments were made, this service was performed by the Union Stock Yards and Transit Company, one of the defendants in this case, and they have maintained a corps of men just to do that service. No one other than the Stock Yards Company's employees is permitted to

do that service, or was permitted during that period to do that service. The live stock shipments usually arrived at the
417 Yards during the night. Shipments generally start in, we will say, at 6:08 P. M. on Sunday evening and all unloaded by about six o'clock in the morning; during the rest of the week they arrive from about ten P. M. until about six A. M. during the night. Our heaviest receipts are Sunday night and Wednesday night for the Monday and Thursday market. The next in the matter of importance as to the number of cars is Monday night and Tuesday night; Monday night for Tuesday market and Wednesday night for Thursday market.

Q. And about how man carloads of live stock were there at the Stock Yards on an average on Sunday night?

A. Oh, for instance, Monday of this week, and it is a fair average, we had 1,627 cars. The average weekly receipts of carloads would be from 4,500 to 5,000 cars, and all of the loading and unloading of those cars is done by the Union Stock Yards and Transit Company, and was done during the period covered by our claim.

Cross-Examination by Mr. Towner.

Q. In the opening of your examination this morning you testified with respect to the matter of the payment of the charges of transportation of live stock at the Stock Yards in Chicago during the period of Federal control, did you not?

A. Yes, sir. I also testified on that subject in the hearings before the Interstate Commerce Commission.

Mr. Towner: Q. I direct your attention, Mr. Park, to page 98 of this document, which I have had marked Defendant's Exhibit 1 for identification, and will ask you to state whether or not on that page appears the evidence offered by you before the Interstate Commerce Commission with respect to the subject of the payments of the charges?

418 Mr. Godman: That is supposed to be a stenographic transcript, Mr. Towner?

Mr. Towner: Yes. I might state by way of explanation, it is a stenographic report or transcript of the testimony taken before the Commission, taken in the month of July, 1921.

The Witness: I tried to go back here a little bit in the transcript to locate where my testimony started, and I find

it started on page 96 and continues through 97 and I find on 98 a continuation of that same testimony.

Mr. Towner: On page 96 here is the testimony which relates particularly to the manner in which the charges were paid at the Yards during that period, is that so?

The Witness: I have not read this, Mr. Towner, but undoubtedly I will say that is my testimony. My testimony on the same subject also appears at page 122 of Defendant's Exhibit 1 for identification.

Mr. Towner: Now, referring to the same subject, Mr. Park, you had no intention in testifying this morning on that subject to testify any different than you did in the hearings before the Commission did you?

A. Most assuredly not.

Q. The facts testified to by you before the Commission with respect to that matter are still true and correct, are they not?

A. Yes, sir.

Q. Is this statement you say filed with the Interstate Commerce Commission, Exhibit 1-A, the statement that was offered before the Commission?

A. Yes, sir.

Q. Is that the document that was in the box that Mr. Godman referred to?

A. That is a carbon copy of the original exhibit that 419 was turned over to the Commission as Exhibit 1-A.

Q. Does the amount of the reparation to which you testified include the twenty-five cents charge on all shipments that moved into the Stock Yards during Federal control?

A. No, sir.

Q. Does it include shipments moving both inter- and intra-state commerce during that period?

A. It does.

420 *Cross-Examination by Mr. McLaughlin.*

I spoke about the Director General continuing the operation of the railroads after the President took possession of them, with practically the same employees as those that had been operating the railroads of the Stock Yards by the railway companies before Federal control. The changes after the Director General took charge would have been about the same as they were previous to the Director General's assumption of the properties. The railway companies, before

Federal control, were absorbing fifty cents of the Stock Yard Company's charges for loading, and twenty-five cents for unloading live stock, and these absorptions were provided for in the railway companies tariff. After the Director General took charge he continued to make the same absorptions, and he was continuing to operate pursuant to the same tariff that the railway companies had on file until later on he made changes. I filed Defendant's Exhibit 1-A with the Interstate Commerce Commission on February 25, 1921. This was filed in Docket No. 9977.

Q. That was on the very day that the complaint was filed in Docket No. 12614?

A. That is correct. Mr. McLaughlin, you say we filed it in 9977. We filed 12614 the same time, so possibly there is some technicality there, that I am not qualified to answer upon, whether or not Mr. Hillyer had in mind the filing of that claim—whether there was something technical to it—with 12614, or 9977, so possibly I should qualify my answer on that enough to say that I am not sure just what he had in mind.

Mr. Hillyer: I think that probably the witness has been a little bit misled by your expression "filed." He deliv-
421 ered it, as I recall it, he delivered to the Commission on the date that he gave you, February 25, 1921.

The Witness: That is correct. I am stating what time it was first delivered. Possibly I should have used the word "delivered" instead of "filed." It was filed later on in a regular hearing of the Interstate Commerce Commission at the Stock Yards, and received by the Interstate Commerce Commission and marked by them as Exhibit 1-A.. The exhibit was introduced originally I think in the hearing at the Union Stock Yards in Chicago, and received by the Commission and marked by them as Exhibit 1-A, the original claim.

Q. You didn't file anything with the Commission marked Exhibit 1-A until October, 1922, you say?

A. That was the hearing, that is correct, the hearing in the Stock Yords, Chicago.

Mr. McLaughlin: I am trying to get at the time that Exhibit 1-A was marked an exhibit in the hearing before the Interstate Commerce Commission.

The Witness: That was at a hearing of the Union Stock Yards, Chicago, in the Exchange building, before Examiner Satterfield.

Mr. McLaughlin: October 3, 1922, wasn't it?

A. That sounds like it, but I am not sure as to date, Mr. McLaughlin, I don't want to testify to it.

Q. So that you are in error in saying that Exhibit 1-A was filed in February, 1921?

A. Well, I am just trying to avoid any of your technicalities. I delivered that claim right there to the office of the Interstate Commerce Commission on February 25, 1921, and there is no if's or and's about that.

422 Mr. McLaughlin: Q. You did not deliver the document that is in this frame box to the Commission in February, 1921, did you?

A. I did turn over to the Commission a copy of it.

Q. I am not asking that; I will ask to strike out the answer.

Mr. Hillyer: You mean the original?

The Witness: That is what I mean by the copy, that is a copy of the original that was turned over to the Commission, was delivered to the Commission physically by me on February 25, 1921.

The Court: These are not the identical documents that you turned over?

The Witness: No, sir, they are the carbon copies of the original documents.

Mr. McLaughlin: Q. You did not commence the performance of your duties until some time in 1919?

A. May 1st, 1919.

Q. And you had nothing to do with the handling of any of this stock, or the payment of any of these charges, did you, personally?

A. As a Traffic Manager, I had, and every one of these individual commission firms at the Yards, it was my duty to watch the payment of their freight charges, to see that the correct amount was paid, and no more, and to see that they were paid, and therefore, Mr. McLaughlin, it was my duty to go into the Commission firms' offices from time to time, and go into all of them, and examine their original records over a period back two years prior to the time that I assumed the position of Traffic Manager of the Exchange, because of the fact it was possible to file overcharge claims, or make refunds to carriers for that period previous to the two years that I assumed this position, and therefore I want to say to you that I was intimately acquainted with the records in the Commission's firms' offices.

423 Q. My question was you had nothing personal to do with the handling or paying of these carloads of stock?

A. If you assume that from the answers I have given you, you are wholly mistaken because I did have personal contact with them, yes, sir.

Q. What did you do with reference to receiving any carloads of this stock?

(No response.)

Q. If you did have anything to do with receiving any carloads, tell the jury about it?

A. I have just stated that as Traffic Manager for these Commission firms it was my duty, and I did inspect their records.

Q. What did you do in the performance of your duty in receiving any carloads of stock? Take one thing at a time?

A. Checked their freight records, their payment of freight charges, to see that they were proper.

Q. That did not have anything to do with receiving carloads of stock?

A. I never unloaded any of the stock.

Q. You were not there to see it unloaded?

A. Yes, I have seen them unloaded, thousands and thousands of carloads of stock.

Q. But without paying particular attention to what commission man's stock it was or what shipper's stock?

A. I would not say that, but I will say this, and it may suit your purpose, I have never kept a record of each car; I say 3244 unloaded in a single day.

Q. That is not my purpose. You misconceived it entirely. I want to know whether or not what you are testifying to about is something you gleaned from looking at the rec-
424 ords of the commission men, or in some other way?

A. It is taken from actual contact, in watching them unload stock, seeing how they unloaded, how they handled it, following the bills through the Stock Yard Company offices, through the joint agency offices, personally, into the commission firms' offices, and there seeing them paid.

Q. How many of the bills did you so follow?

A. Oh, a very small percentage of the aggregate, necessarily.

Q. You did not follow this 540,005, did you?

A. 560,000 cars, no, sir.

Q. And you did not pay any of this money over, did you?

A. Not personally, no; I O.K.'d the payment of them.

Q. You did not see any of the money paid over, did you?

A. Yes, I saw the checks, and approved the payments of a great quantity of them.

Q. Great quantities of them?

A. Yes, sir.

Q. As a rule, doesn't the Commission man check the bill, and after getting the weight of the stock and making allowances for the fill, doesn't he put the weight to be charged as freight down on the bill and compute the amount of the freight rate, and then doesn't he pay that bill, and it comes back to you, without consulting you, as a rule?

A. In a vast majority of cases he does that, but he consults me on a certain percentage of them.

Q. If he is in doubt about the matter, and needs expert advice, then he consults you?

A. That is about the situation.

Q. The routine is that the commission man helps make out that bill by adding the correct weight and computing the amount of the freight that will be chargeable, and returns it to the Stock Yards Company or the railroad, and by and 425 by that same document comes back to him, and he pays the bill by writing his check?

A. That is right.

Q. And you as a rule have nothing to do with it?

A. I would say I do have something to do with it, because I am charged with the responsibility of seeing that these payments are correct.

Q. Yes, but you do not see one in a thousand of them, do you?

A. Yes, I see one out of a thousand and more than that, but I don't know what percentage I see. I watch them in a general way, and see that the correct amount of the freight charges are paid.

Q. So that in a large measure, all of this information that you gathered together and put in this document you call Exhibit 1-A was material that you got looking at the bills and the records of the commission men?

A. Yes, sir, and from their check stubs.

Q. And the check stubs?

A. Yes, sir, that is correct.

Mr. McLaughlin: I think that is all.

Mr. Godman: Am I correct in my understanding, Mr. Towner, that there is no claim made by you that the testimony of Mr. Park before the Interstate Commerce Com-

mission, to which you called his attention, is in conflict or contrary to his testimony here?

Mr. McLaughlin: There is not any conflict, Mr. Godman.

Mr. Godman: Is that your position, too, Mr. Towner?

Mr. Towner: I cannot conclude myself on that, other than the fact that Mr. Park, who testified before the Commission, said that he testified correctly.

426 Mr. Godman: That is all right. I understood you made the statement in one of your questions to Mr. Park, when you asked him whether or not he testified correctly before the Interstate Commerce Commission, leaving the impression that possibly his testimony there was different from the testimony here, and I wanted to clear that up. I understand that is not your position.

Mr. Towner: I do not think he testified differently. I cannot promise that because I have not looked through all the testimony before the Commission.

Mr. Towner: Now, on behalf of the Stock Yards Company, I wish to make a motion to strike from the record all of the witness Park's testimony with respect to the number of carloads involved in this reparation claim, and also in respect to the amount of money involved, on the ground that it affirmatively appears from his cross-examination that all of his information is derived from these other records of commission men, operating out of the Stock Yards, that he has no personal knowledge of his own upon which he can make a statement he did make; these records not having been identified, produced, or proven, it seems to me makes his testimony objectionable, secondary and hearsay.

Mr. McLaughlin: And that the Director General joins in that objection and motion.

Mr. Godman: May I suggest that Mr. Park testified here that he is Traffic Manager for each and every one of these plaintiffs, and in that respect an employee of each one of them, and therefore he has first-hand knowledge, in so far as it is possible to have knowledge, in the ordinary course of business. I think he has explained fully what his duties were, and the objection seems to me to go to the weight of the testimony and not to its incompetency.

427 Mr. Towner: I submit that as an additional circumstance. Mr. Park has not even testified that this 1-A is even a copy of these records of the commission men. His testimony goes no further than the statement that he consulted these records and took this information from them.

Now, then, if his testimony is to be given credence, we are asked to believe a number of things, and the first one is that the records themselves are correct. The second, we are asked to believe is that the employees of Mr. Park,—he did not do it all himself, that the employees of Mr. Park correctly drew off from these records, concerning which there has been no testimony, was was shown on them. Now, the fact of the matter is that Mr. Park personally did not even do all of this drawing off. The testimony is that he, either he did so, or it was done under his direction, so that as the record stands, we have first no proof of the records of the commission men were correct. We have, secondly, no proof as to what form they were in, or whether this Exhibit 1-A is a copy. We have thirdly no testimony of the men that drew them off, assuming that drawing off was proper, all we have is Mr. Park's testimony that it was done either by himself or under his supervision, and that it is based upon these records upon which there has been no proof whatever.

The Court: I think the way the record stands now it is in rather bad condition, and I will sustain the objection as made and strike out the testimony that was asked to be stricken out.

Mr. Godman: That is the testimony of Mr. Park in respect to this Exhibit 1-A, and the amount which he said was paid for this loading and unloading service, that is what goes out.

The Court: Did your objection go that far?

428 Mr. Towner: No, my motion was to strike out on the record all of Mr. Park's testimony relative to the number of cars and the amount of reparation, that is the only thing.

Mr. Godman: That is your motion?

Mr. Towner: That is the only evidence he put in that was based directly on this exhibit.

The Court: I grant that motion.

To which ruling of the court the plaintiffs by their counsel then and there duly excepted.

Mr. Godman: We entered into a stipulation, if the Court please, which I believe may be properly referred to now. This stipulation, if Your Honor please, provides in the last paragraph that either parties reserve the right to object to the relevancy and materiality of some of the facts which are stipulated to be the true facts, assuming that the testimony in respect to those matters is admissible. Our stipulation is that the facts are as stated here.

We have agreed that as far as the exhibits are concerned the various tariffs referred to in the record before the Interstate Commerce Commission, the transcript of testimony and all that, copies may be used and referred to by both sides, as may be necessary, and that no objection will be made on the ground that they have not been properly identified as original documents. That is correct, is it?

Mr. McLaughlin: Yes, that is correct.

The Court: Do you expect the court to pass upon the relevancy as the stipulation is being read?

Mr. Godman: If the question is raised.

Mr. Towner: I can say now there will be no question raised by the Stock Yards Company as to any matter covered by the stipulation.

Mr. McLaughlin: Nor by the Director General.

The Court: Very well.

429 Mr. Godman: There is one feature that the plaintiff objects to on the theory that it is irrelevant, and that refers to the tariffs, official classification so-called, which the Director General and the Stock Yards and Transit Company referred to in the stipulation.

Mr. Towner: On that point I will say that the Stock Yards Company was not a party to this classification. You will find a paragraph in the stipulation to the effect that the Stock Yards Company did not participate, nor was it a party to any of the railroad tariffs, so that that matter of classification rests between you and Mr. McLaughlin.

Mr. Godman: Mr. McLaughlin insists on having this in; he desires to have it in. I don't think they are relevant.

The Court: When we reach those we can argue them.

Mr. Godman: Yes.

And thereupon the aforesaid stipulation of the parties was read to the jury, and is in the words and figures as follows:

It is hereby stipulated and agreed by and between the parties in the above entitled suit, by their respective attorneys, as follows:

That in the trial of said cause in the United States District Court for the Eastern Division of the Northern District of Illinois, the facts hereinafter set forth shall be taken as true, and that all tariffs, documents and exhibits referred to herein and made a part hereof, either by reference or by being attached hereto, may be offered in evidence on the trial of said cause without further identification or authentication, and

when so offered in evidence same shall have the same force and effect as if original documents, properly identified and authenticated, as provided by law.

430 (1) That the effective charges and certain matters pertaining thereto for loading live stock into railroad cars and unloading live stock from railroad cars at the Union Stock Yards, Chicago, Illinois, for the period between May 21, 1917, and January 26, 1921, which includes the period of Federal control of railroads, were published by defendant, the Union Stock Yard and Transit Company of Chicago, hereinafter called Stockyards Company, in its own tariffs, and supplements thereto, which were filed with the Interstate Commerce Commission.

(2) That said tariffs and supplements were as follows: U. S. Y. & T. Co. Tariff No. 1, I. C. C. No. 1, effective May 30, 1913; U. S. Y. & T. Co. Tariff No. 2, I. C. C. No. 2, effective May 21, 1917; U. S. Y. & T. Co. Tariff No. 3, I. C. C. No. 6, effective June 21, 1917; Supplement No. 1 to U. S. Y. & T. Co. Tariff No. 3, I. C. C. No. 6, effective September 1, 1917; Supplement No. 2, to U. S. Y. & T. Co. Tariff No. 3, I. C. C. No. 6, issued September 1, 1917; Supplement No. 3 to U. S. Y. & T. Co. Tariff No. 3, I. C. C. No. 6, issued December 30, 1917; Supplement No. 4 to U. S. Y. & T. Co. Tariff No. 3, I. C. C. No. 6, issued June 10, 1910; Supplement No. 5 to U. S. Y. & T. Co. Tariff No. 3, I. C. C. No. 6, effective December 31, 1918; Supplement No. 6 to U. S. Y. & T. Co. Tariff No. 3, I. C. C. No. 6, effective November 1, 1920; and Supplemental No. 7 to U. S. Y. & T. Co. Tariff No. 3, I. C. C. No. 6, issued November 1, 1920; and Supplement No. 8 to U. S. Y. & T. Co. Tariff No. 3, I. C. C. No. 6, effective January 26, 1921.

(3) That copy of each of the aforementioned tariffs and supplements, duly certified by George B. McGinty, Secretary of the Interstate Commerce Commission, is attached hereto, and made a part hereof, and numbered Exhibit 1.

(4) That the property of said defendant, Stockyards Company, was not taken over or operated by the Gov-
431 ernment during the said period of Federal control of railroads, which commenced at noon, December 28, 1917, and ended at midnight, February 29, 1920.

(5) That prior to the said period of Federal control of railroads, the line-haul carriers entering Chicago, Illinois, and engaged in the transportation of live stock to and from the said Union Stock Yards, were not named as parties to

any of the aforementioned tariffs or supplements of defendant, Stockyards Company.

(6) That during the said period of Federal control of railroads the Director General of Railroads was not, either through any line which was taken over or operated by the Government, or otherwise, named as a party to any of the aforementioned tariffs or supplements of defendant, Stockyards Company.

(7) That prior to said period of Federal control of railroads, L. A. Lowrey, as the duly authorized and appointed agent of the said line-haul carriers entering Chicago, Illinois, and engaged in the transportation of live stock to and from the said Union Stock Yards, filed with the Interstate Commerce Commission his Tariff No. 20-J, which became effective July 22, 1917, under I. C. C. No. 37, providing among other things for the absorption by said line-haul carriers of the aforementioned charges of defendant, Stockyards Company, in the sum of fifty cents (50c) for loading each carload of live stock into railroad cars, and in the sum of twenty-five cents (25c) for unloading each carload of live stock from railroad cars at the said Union Stock Yards, Chicago. The charges of the said Stockyards Company for loading and unloading live stock at said Union Stock Yards from the time same were established to May 21, 1917, was fifty (50c) cents for loading and twenty-five (25c) cents for unloading each carload of live stock and said amounts were absorbed in
432 full by the line-haul carriers during said entire period.

(8) That at noon, December 28, 1917, the Director General of Railroads took over the lines of railroad of said line-haul carriers entering Chicago, Illinois, which were engaged in the transportation of live stock to and from said Union Stock Yards, and applied the said Lowrey's Tariff No. 20-J, I. C. C. No. 37, and supplements thereto as hereinafter described.

(9) That during the said period of Federal control of railroads, the Director General of Railroads published two supplements to said Lowrey's Tariff 20-J, I. C. C. No. 37, adopting in form and substance and carrying forward and continuing in force during the said period of Federal control the absorptions as provided for in said Lowrey's tariff, of the aforementioned charges of defendant Stockyards Company, for loading live stock into railroad cars and unloading live stock from railroad cars at the said Union Stock Yards, which supplements were duly filed with the Interstate Com-

merce Commission under Nos. 15 and 20, and became effective August 30, 1919, and December 31, 1919, respectively.

(10) That subsequent to the said period of Federal control, said L. A. Lowrey, as the duly authorized and appointed agent of the line-haul carriers entering Chicago, Illinois, and engaged in the transportation of live stock to and from the said Union Stock Yards, published a supplement to his said Tariff 20-J, I. C. C. No. 37, providing for the absorption in full of the charges of defendant, Stockyards Company, for loading ordinary live stock into railroad cars and unloading ordinary live stock from railroad cars at the said Union Stock Yards, which supplement was duly filed with the Inter-
433 state Commerce Commission as Supplement No. 31 to Tariff 20-J, Supplement 24 to Tariff I. C. C. No. 37, and became effective April 1, 1920.

(11) That copies of the pages of said Lowrey's Tariff 20-J, I. C. C. No. 37, viz: title page, and pages 2, 3, 6, 7, 8, 66, 67, and 72; of title page and pages 2 and 3 of Supplement No. 15 thereto; of title page and pages 2 and 3 of Supplement No. 20 thereto; and of title page and page 14 of Supplement No. 24 thereto; which have been duly certified by George B. McGinty, Secretary of the Interstate Commerce Commission, are attached hereto, made a part hereof, and numbered Exhibit 2.

From paragraph 12, Mr. Hillyer, on down to where? What are the paragraphs you object to?

Mr. Hillyer: Paragraphs 12 to 25 inclusive.

Mr. Godman: Paragraphs 12 to 25 inclusive refer to official classifications, that the Director General relies on, and it is those we object to. And I will go on beginning with the next paragraph, 26.

The Court: Twelve is the one you are on now?

Mr. Godman: Yes, from 12 to 25.

The Court: Both inclusive?

Mr. Godman: Yes.

The Court: Those you will object to?

Mr. Godman: Objections will be made to them.

The Court: Yes.

Mr. Towner: The objection can come up when we offer them.

Mr. Godman: Yes. The next paragraph I will read is 26.

434 (26) That the Stockyards Company has never joined in or been a party to any tariff or tariffs issued by the

railroads or line-haul carriers, or the Director General; has never concurred in any rate or rates published by them in said tariff or tariffs.

(27) That the physical acts of loading all live stock into railroad cars, and of unloading all live stock from railroad cars at the said Union Stock Yards during the period of Federal control, including all live stock involved in this suit, were done and performed by employees of the defendant, Stockyards Company, which maintained forces of employees for such purpose; that the unloading platform, chutes and yards were owned by and were on the premises of the said Stockyards Company.

(28) That the Union Stock Yards and Transit Company of Chicago was and is a corporation created by a special
435 act of the Legislature of the State of Illinois, approved February 13, 1865, and has its principal office and place of business in the city of Chicago, Illinois.

(29) That Andrew W. Mellon was, at the time of the commencement of said suit, and still is, the agent designated by the President pursuant to the provisions of Section 206, Transportation Act, 1920, against whom suits may be brought on causes of action arising out of the possession, use and operation by the President of the Railroads and systems of transportation named in paragraph 3 of said petition, under the Federal Control Act; that William G. McAdoo and Walker D. Hines were Directors General of Railroads during the Federal control period beginning December 28, 1917, at twelve o'clock noon, and ending at 12:01 a. m. March 1, 1920; that said William G. McAdoo served as such Director General of Railroads from December 28, 1917, to January 10, 1919, and Walker D. Hines served as such Director General of Railroads from January 10, 1919, to March 1, 1920; that all of said railroads named in the petitions in said cause had during said period lines of railroad extending into the Eastern Division of the Northern District of Illinos, except Toledo, St. Louis & Western Railroad, and that this court would have jurisdiction except for Federal control if the said causes of action had arisen against the said railroads and systems of transportation; that pursuant to Section 206-A, Transportation Act, 1920, the President, on or about March 1, 1920, designated Walker D. Hines as the Agent provided for therein, who continued as such agent until May 18, 1920, when John Barton Payne was duly designated by the President as his successor; that said John Barton Payne con-

tinued as such agent until March 28, 1921, when James
436 C. Davis was appointed by the President as his successor as such agent; that James C. Davis continued as such agent until December 31, 1925, when Andrew W. Mellon succeeded to such office by appointment duly made by the President under date of December 14, 1925, and the said Andrew W. Mellon still continues in office as such agent.

(30) That on the filing of the Stockyards Company's Supplement No. 1 to its tariff I. C. C. No. 6, effective September 1, 1917, protests were filed with the Commission. Subsequent thereto and before the effective date of said supplement the Commission suspended same, and set it down for hearing under Investigation and Suspension Docket No. 1118, and thereafter extended such suspension order from time to time.

(31) That on November 17, 1917, the Chicago Live Stock Exchange filed a complaint with the Interstate Commerce Commission; that said complaint was docketed under I. C. C. Docket No. 9977; that answers were filed by the defendants named therein, and said complaint was consolidated with the said Investigation and Suspension Docket No. 1118; that after full hearing of cases so consolidated the Interstate Commerce Commission, on February 11, 1919, rendered its decision. The opinion and findings of the Commission was in writing and is reported in 52 I. C. C. 209, which opinion and findings as so reported are by reference made a part hereof. A
437 true copy of said complaint of the said Chicago Live Stock Exchange is by reference made a part hereof.

(32) That on or about March 31, 1919, the Chicago Live Stock Exchange and said Stockyards Company filed petitions for rehearing in said proceeding.

(33) That on March 13, 1919, the Commission amended its said order of February 11, 1919, entered in said Docket No. 9977, by requiring cancellation by the said Stockyards Company of its Supplement No. 1 to its Tariff I. C. C. No. 6, nunc pro tunc, as of December 31, 1918. Such order was complied with by said Stockyards Company by filing its Supplement No. 5 to I. C. C. tariff No. 6, on the 29th day of March, 1919, restoring and continuing in effect the loading and unloading charges contained in its Tariff I. C. C. No. 6. A copy of said Supplement No. 5 so filed pursuant to said supplemental order is attached hereto as a part of Exhibit 1, and is made a part hereof. A copy of said order of the Commission is by reference made a part hereof.

(34) That on or about April 14, 1919, the Commission, in a supplemental order, reopened said proceedings, for further hearing, and named the Director General as a party respondent. A true copy of said supplemental order is set out on pages 17 and 18 of the petition in above entitled cause, and is by reference made a part hereof.

(35) That after the re-opening of said proceedings pursuant to said supplemental order of April 14, 1919, a further hearing was had and further testimony was taken before Chairman Aitchison of the Interstate Commerce Commission, and Examiner Gerry at Chicago, Illinois, on May 20, 21, and 22, 1919.

(36) That after such further hearing the Commission on July 15, 1920, rendered its decision making report there-
438 of in writing, same being reported in 58 I. C. C. 164, which report, opinion and findings of the Commission, as so reported, are by reference made a part hereof.

(37) That on or about February 25, 1921, the Chicago Live Stock Exchange filed a complaint with the Interstate Commerce Commission naming as defendant John Barton Payne, Director General as Agent, the Union Stock Yards and Transit Company, Atchison, Topeka and Santa Fe Railway Company and other railway companies, and said complaint was docketed as I. C. C. No. 12614. The defendants named therein were duly notified and filed answers. Said complaint so filed is by reference made a part hereof. A printed list containing many thousands of names of persons, firms and corporations alleged to have shipped live stock to, or to have received live stock at, or to have shipped live stock from the Union Stock Yards, Chicago, during the time covered by the said complaint, was filed therewith and described therein as Appendix A. A copy of said Appendix A so filed with said complaint may be offered in evidence on the trial of this cause by any party hereto without being certified as a true copy.

(38) That a hearing was had on said complaint I. C. C. Docket No. 12614, before Examiner Howard Hoamer at Chicago on July 14, 1921. That on or about April 8, 1922, the Interstate Commerce Commission made an order re-opening said I. C. C. Docket No. 12614, and said I. C. C. Docket No. 9977, for further hearing and ordered that the two cases be consolidated and assigned for hearing at a time and place to be fixed by the Commission. Said order is by reference made a part hereof. Pursuant to said order further hearings were had at Chicago, Illinois, before Examiner Lawrence Satter-

field on October 3, 4, 5, 6, and 9, and November 6, 7, 8 and 9, 1922, and at Boston, Mass., before Examiner Paul O. Carter on February 24, 1923.

439 (39) That after such hearing, and on or about June 2nd, 1925, the Commission rendered its decision making report thereof in writing, same being reported in 100 I. C. C. 266, which report and findings of the Commission as so reported is by reference made a part hereof. On December 12, 1927, the Commission made its further supplemental order in said cases, which order is by reference made a part hereof. On January 11, 1926, the Commission made a further order in said cases, a copy of which order is attached hereto as Exhibit 8 and made a part hereof. On May 14, 1928, the Commission made its further order in said cases, which order is by reference made a part hereof. On November 27, 1928, the Commission made its further order in said cases, which order is by reference made a part hereof.

(40) The hearings on the various complaints herein mentioned, and in the said proceedings in I. & S. Docket No. 1118, and I. C. C. Dockets Nos. 9977 and 12614, were held at Chicago on November 8, 1917; at Chicago on March 13 to March 16, inclusive, 1918; at Chicago on May 20 to May 22, inclusive, 1919; at Chicago on July 14, 1921; at Chicago on October 3 to October 6, inclusive, 1922; at Chicago on October 9, 1922; at Chicago on November 6 to November 9, inclusive, 1922; and at Boston on February 24, 1923. On all said hearings, the testimony was taken down in shorthand by an official reporter, and transcripts of all such testimony and the exhibits mentioned therein were filed in said proceedings in the office of the Secretary of the Interstate Commerce Commission, and the transcripts so filed and exhibits mentioned therein and received in evidence, contain all of the evidence taken in said proceedings and each of them, and all of the evidence before the Commission in rendering the various

440 decisions and opinions, and in making the various findings hereinbefore referred to. Said transcripts and exhibits so filed and each of them are by reference made a part hereof, and may be received in evidence on the trial of this suit when offered, by any party, by copy, without further identification or authentication than the statement of the party offering same that the documents offered are copies of such transcripts and/or exhibits filed with the Secretary of the Interstate Commerce Commission.

(41) A true copy of the docket of the Interstate Commerce Commission in said proceeding I. & S. No. 1118 showing all

entries therein from the initiation of said proceeding by the Commission to date hereof, is attached hereto, marked Exhibit 9, and made a part hereof.

(42) A true copy of the docket of the Interstate Commerce Commission in said I. C. C. No. 9977, showing all entries therein from the filing of the complaint therein by the Chicago Livestock Exchange on November 17, 1917, to the date hereof, is attached hereto, marked Exhibit 10, and made a part hereof.

(43) A true copy of the docket of the Interstate Commerce Commission in said I. C. C. No. 12614, showing all entries therein from the time of the filing of the complaint by the Chicago Livestock Exchange, on February 25, 1921, to the date hereof, is attached hereto, marked Exhibit 11, and made a part hereof.

(44) All shipments of livestock involved in this suit consisted of carloads moved on carload ratings as ordinary livestock. In no case was the rate for transportation based on value of the livestock other than the value prescribed by the Interstate Commerce Commission for ordinary livestock.

441 (45) The testimony taken at Boston February 24, 1923, before Examiner Carter was in reference to amount of damage claimed by certain packing companies, none of whom are involved in this suit, and such testimony is not relevant or material to any issue in this suit and has no bearing thereon.

(46) This stipulation is without prejudice to the right of any party hereto to object to the relevancy or materiality of any fact stipulated herein to be true or of any exhibit or portion identified herein and attached hereto or of any document or other matter made a part hereof, by reference.

Each party hereto reserves and has the right to offer other or further testimony on the trial of this cause, not, however, contradictory of any fact herein stipulated to be true.

(Signed) SIMS GODMAN & STRANSKY
Attorneys for Plaintiffs.

(Signed) EDGAR R. HART
A. A. MCLAUGHLIN
Attorneys for Defendant A. W. Mellon, Director General of Railroads, as Agent.

(Signed) WINSTON STRAWN & SHAW
Attorneys for Defendant Union Stock Yard & Transit Company.

442 Mr. Godman: If the Court please, the petitioner in this case, in addition to asking for the reparations, asks for reasonable attorneys' fees which he is allowed under the statute and can recover.

Now it may be that is a question that can be considered by the Court after the case is over and the necessity for it should arise, or if it is agreeable to counsel—we are not prepared to put on any expert testimony on that subject at this time; if it is agreeable to counsel to go ahead with their testimony on the merits we will rest our case with the reservation that we may offer that testimony at an appropriate time later, if that is agreeable.

The Cour: Well, it will be all right to close the case with that reservation?

Mr. Towner: We are willing to stipulate that the matter can be taken up after a verdict without prejudice and be disposed of by the Court.

Mr. Godman: Well, I am willing to go to that extent, but now do you agree that we rest our case, reserving the right to put testimony on that subject either to the Court or before the jury at a later time?

Mr. McLaughlin: It is agreeable to me.

Mr. Towner: Reservation only as to evidence on that one subject?

Mr. Godman: Yes.

Mr. Towner: That is agreeable to me, Your Honor.

The Court: Very well.

Mr. Godman: Plaintiffs rest with that reservation.

And Thereupon the Plaintiffs Rested Their Case in Chief.

443 Thereupon the defendants, to maintain the issues on their part, introduced the following evidence, to-wit:

Mr. Towner: If Your Honor please, on behalf of both defendants there is certain evidence that I will offer at this time. I might add, by way of explanation, both to the court and to the jury, that this is evidence which is referred to in the stipulation that Mr. Godman read. The matters that we propose to introduce are matters that are referred to in the stipulation and which are there agreed as being available.

There is attached to the stipulation which Mr. Godman read a certain number of exhibits which are referred to in the stipulation; I think as Defendants' Exhibit 1, I think that is the proper method of numbering them. I will offer

the original of that stipulation, together with the exhibit attached to it and referred to in it. I will go no further than the offer, because I think the stipulation has been read, most of it at least.

Mr. McLaughlin: That might be confusing, because you have that transcript marked Defendants' Exhibit 1.

Mr. Towner: I will straighten that out. This is the original stipulation, with the exhibits that are attached to it. I will offer them as—

The Court: Aren't you encumbering your record by offering the whole stipulation that the plaintiff offered?

Mr. Towner: The fact of the matter is the plaintiff did not offer it, as I understand it; he did not offer the stipulation itself. It will be confusing if the stipulation is not in as an exhibit, for the reason that there are some eight or nine exhibits attached to the stipulation and to intelligently consider these exhibits one would have to have the stipulation before him, so that what we would like to do
444 is to offer the stipulation, together with the exhibits, as one exhibit.

Mr. Godman: We object to paragraphs 12 to 25, both inclusive; to the rest we have no objection.

Mr. Towner: That, I think, Your Honor, raises the question in which Mr. McLaughlin is interested, inasmuch as the exhibit is offered on behalf of the Director General as well as on behalf of the Stock Yards Company, and I will ask him to reply.

Mr. McLaughlin: I would like to suggest that I do not have in my portfolio reference to the Interstate Commerce Act to which I desire to call Your Honor's attention, and if counsel could make objection to this, and Your Honor reserve a ruling on it until tomorrow morning, I will have my reference here.

The Court: Very well; you object to these specific paragraphs?

Mr. Godman: Yes.

The Court: 12 to 25, both inclusive?

Mr. Godman: Yes.

Mr. Towner: The balance will be admitted.

The Court: Yes; all admitted except paragraphs 12 to 25, both inclusive, of the stipulation, to which objection is made and ruling reserved.

Mr. McLaughlin: Your objection goes to the exhibits in these paragraphs as well as the paragraphs themselves?

Mr. Godman: The objection goes to the exhibits in the paragraphs as well as the paragraphs themselves.

Whereupon said document marked Defendants' Exhibit 1, being a stipulation together with exhibits attached, was received in evidence (excepting paragraphs 12 to 25, inclusive, and the exhibits referred to in said paragraphs) and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though
445 fully set out herein. Said Defendants' Exhibit 1 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

446 Mr. Towner: I will next offer as Defendants' Exhibit 2 a copy of the complaint filed by the Chicago Live Stock Exchange before the Commission in this case, I. C. C. Docket 9977, and I will ask that it be marked Defendants' Exhibit No. 2.

Mr. Godman: No objection, Your Honor.

The Court: It may be admitted.

Whereupon said document marked Defendants' Exhibit ..... was received in evidence, and is in the words and figures as follows to-wit:

447 DEFENDANTS' EXHIBIT 2. Defts.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

The Chicago Live Stock Exchange, *Complainant*,
vs.
Atchison, Topeka & Santa Fe Railway Company, *et al.*, *Defendants.*
} I. C. C. Docket No. 9977.

PETITION.

SIMS, WELCH & GODMAN,
Attorneys for Complainant,
Marquete Building,
Chicago, Ill.

HARRY C. BARNES,
Of Counsel.

448 BEFORE THE INTERSTATE COMMERCE COMMISSION.

The Chicago Live Stock Exchange,

Complainant,

vs.

Atchison, Topeka & Santa Fe Railway Company,
Baltimore & Ohio Railroad Company,
Baltimore & Ohio Chicago Terminal Railroad,
Chesapeake & Ohio Railway Company of Indiana,
Chicago & Alton Railroad Company,
Chicago & Eastern Illinois Railroad Company, and W. J. Jackson, Receiver,
Chicago & Erie Railroad Company,
Chicago & North Western Railway Company,
Chicago, Burlington & Quincy Railroad Company,
Chicago Great Western Railroad Company,
Chicago, Indianapolis & Louisville Railway Company,
Chicago Junction Railway Company,
Chicago, Milwaukee & St. Paul Railway Company,
Chicago, Rock Island & Pacific Railway Company,
Chicago, Terre Haute & Southeastern Railway Company,
Cleveland, Cincinnati & Southeastern Railway Company,
Grand Trunk Western Railway Company,
Illinois Central Railroad Company,
Indiana Harbor Belt Railroad Company,
Michigan Central Railroad Company,
Minneapolis, St. Paul & Sault Ste. Marie Railway Company,
New York Central Railroad Company,
New York, Chicago & St. Louis Railroad Company,
Pennsylvania Company,
Pere Marquette Railway Company,
Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company,
Toledo & Western Railroad Company,
Union Stock Yard & Transit Company,
Wabash Railway Company,

Defendants.

PETITION.

The petition of the above named complainant respectfully shows:

I.

That The Chicago Live Stock Exchange is an association of persons, firms and corporations incorporated under the laws

of the State of Illinois; that its membership consists of live stock commission merchants and owners and raisers of cattle engaged in the buying, selling, receiving and shipping of live stock in interstate and foreign commerce, and principally in receiving live stock at the Union Stock Yards, Chicago, Illinois, for the purpose of being marketed there; that the said association represents every shipper and receiver of live stock at every station in the United States shipping to and from the public live stock market located at the Union Stock Yards in the City of Chicago, Illinois; that the complainant association and the individual members thereof are now, and have for many years past been engaged in promoting, fostering and improving the live-stock industry throughout the United States and particularly throughout the territory in which the patrons of the Chicago market are located; that shipments of live stock, consisting of cattle, calves, swine, sheep, lambs and goats, are consigned to the individual members of the petitioning association, or are by them shipped to and between points in the several states of the United States and the District of Columbia and between points in the United States and points in foreign countries, and that such shipments in interstate and foreign commerce are made over the lines of the defendant carriers; and that this complaint is brought on behalf of the members of the complainant association severally and collectively.

449 II.

That the defendants, saving and excepting the Union Stock Yard & Transit Company, are, in respect to the activities hereinafter complained of, common carriers engaged in the transportation of passengers and property by railroad by continuous carriage and shipment in interstate and foreign commerce and are particularly engaged in the transportation of live stock to and from the Union Stock Yards in the City of Chicago, Illinois, from and to various points in the different states of the United States and foreign countries, and as such common carriers are subject to the provisions of the Act to Regulate Commerce approved February 4, 1887, and all acts amendatory thereof and supplementary thereto.

III.

The Union Stock Yard & Transit Company, hereinafter referred to as the Stock Yard Company, was incorporated un-

der a special act of the legislature of Illinois, February 13, 1865, which authorized it to locate, construct, and maintain near the southerly limits of the City of Chicago:

"* * * All the necessary yards, inclosures, buildings, structures, and railway lines, tracks, switches, and turnouts, aqueducts, for the reception, safe-keeping, feeding, and watering, and for the weighing delivery, and transfer of cattle and live stock of every description, and also dead and undressed animals that may be at or passing through or near the City of Chicago, and for accommodation of the business of a general union stock yard for cattle and live stock, including the erection and establishment of one or more hotel buildings, and the right to use the same; * * * to make advances of money upon such cattle and live stock for freight or other purposes as may become expedient. * * *"

The charter further provided:

"That said company shall construct a railway, with one or more tracks, as may be expedient, from the grounds which may be selected for its said yards, so as to connect, outside of the City of Chicago, the same with the tracks of all the railroads which terminate in Chicago, the lines of which enter the city on the south between the lake shore and the southwest corner of said city, * * * and to make connections with such suitable sidetracks, switches, and connections as to enable all of the trains running upon said railroads easily and conveniently to approach the grounds selected for said yards, and may make such arrangements or contracts with such railroad companies, or either of them, for the use of any part or portion of the track or tracks of such company or companies which now is or hereafter may be constructed for the purposes aforesaid, as may be agreed upon between the parties; * * * and to transport and allow to be transported thereon between said railroads and cattle yards, all cattle and live stock and persons accompanying the same to and from said yards, and may also transport and allow to be transported between the railroads entering said city, * * * freight and property of every kind as well as stock and cattle. * * *"

450 After its creation it acquired real estate, constructed and operated stockyards, with a stock market, built a hotel for the accommodation of its patrons, and constructed in the stockyards district about 300 miles of railroad track, consisting of main lines connecting with the trunk lines entering Chicago, and a large number of switches to the various industries which had been established adjacent to such tracks.

Prior to December 15, 1897, the Stock Yard Company carried on the stockyards and railroad business, and although it had regular charges for the services it performed, it filed no tariffs with the Interstate Commerce Commission and concurred in none. On December 15, 1897, the Stock Yard Company leased all of its railroad tracks and equipment for a term of fifty years to a corporation known as the Chicago & Indiana State Line Company (hereinafter called the "State Line Company"), retaining for itself the loading and unloading platforms and facilities used in connection with its stockyards business. This lease covered all its railroad and railroad tracks, switches, etc.; roundhouse, repair shops, machine shops, coal chutes, etc., then in existence or theretofore used by the Stock Yard Company in connection with its railroad; and all and singular the equipment and the telegraph lines, instruments, and appurtenances owned or possessed by the Stock Yard Company and used by it in conducting its railroad business. By the terms of the lease, the State Line Company was given the right in the future to maintain and operate upon the lands of the Stock Yard Company additional sidetracks and switch tracks and other appurtenances necessary to reach industrial plants.

Afterwards the State Line Company consolidated with the Chicago, Hammond & Western Railroad Company, and the consolidated company became known as the Chicago Junction Railway Company (defendant herein), and in addition to the railroad leased from the Stock Yard Company, operated a belt line around the City of Chicago. In November, 1907, the Junction Company sold the belt line to the East Chicago Belt Railroad Company, retaining the tracks which had been leased by the Stock Yard Company. The equipment operated by the Junction Company, consisting of locomotives and rolling stock, is owned by the Stock Yard Company, but the Junction Company employs its own engineers and crews.

After leasing its railroad property to the Junction Company, the Stock Yard Company continued to operate its stockyard facilities for loading and unloading cattle and other live stock bound for and coming from points outside the state, and to feed and water live stock in transit over the lines of trunk line carriers, and also to feed, bed, and water live stock shipped to consignees doing business in the stockyards district.

The employees of trunk lines bringing live stock to the stockyards turn over the waybills accompanying such ship-

ments with what are called "Live stock stubs" attached,
451 to the employees of the Stock Yard Company, who use the waybills in unloading and counting the stock, and the waybills and stubs are then sent to the auditor of the Stock Yard Company (being also the auditor of the Junction Company), who retains the stubs and forwards the waybills to the local agents of the trunk lines. The Stock Yard Company advances the charges on such shipments to the trunk lines and collects from the consignees, usually commission men doing business at the stockyards, the moneys it has so advanced for their accommodation.

That thereafter, to wit, on December 1, 1913, the Stock Yard Company of Chicago canceled the lease previously existing between it and the Chicago Junction Railway Company, and entered into a new agreement with the Junction Company, under and by virtue whereof the Stock Yard Company of Chicago divested itself in perpetuity of all property of every kind and character whatsoever, which had been covered by said lease of December 15, 1897.

IV.

That Section 1 of the Act to Regulate Commerce, after defining the term "transportation" to include "all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery * * * and handling of property transported," makes it the duty of every carrier subject to the provisions of the Act "to provide and furnish such transportation upon reasonable request therefor and to establish just and reasonable rates thereto."

That as incidental to its business of transporting or hauling live stock a railroad company must provide means of loading, unloading and caring for such freight pending its delivery to the consignee; that the hauling of the cattle from one point to another and the providing of the cars, tracks, engines and servants for that purpose are no more a part of the service rendered by the carrier than are the loading and unloading and the providing of the appliances and services for those purposes; that the transportation of live stock begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered or stored to be delivered to the consignee, if to be found, at such place

as admits of their being safely taken into possession; and that, therefore, the duty rests with each and every one of the defendant carriers herein transporting live stock to and from the City of Chicago, Illinois, to provide such necessary terminal facilities therefor.

V.

That the Stock Yard Company now owns and for many years has owned extensive yards and other facilities for the unloading, loading, storing and marketing of cattle in the City of Chicago, and that these yards have become by the
452 action of the Stock Yard Company and the various railroad companies centering at Chicago, including the defendants, the general depot for the unloading and loading of live stock at Chicago, and that the defendants hold out to the public the said Union Stock Yards as their live stock depot in that city, and in one way and another their lines of railway connect either directly or indirectly with the platform of the Stock Yard Company of Chicago, where said cattle are loaded and unloaded, and that they have for a long time been accustomed to and do still transport carloads of live stock to the Union Stock Yards; that the defendant carriers handling live stock to or from Chicago, Illinois, have for more than half a century designated the stock yards of the Stock Yard Company of Chicago as their terminal for the receipt and delivery of substantially all carload shipments of live stock handled to and from the City of Chicago; that the live stock hauled to and from the Union Stock Yards of Chicago by the carriers making the line haul has for more than half a century been loaded and unloaded for the carriers by the Stock Yard Company of Chicago, or its employees; that the said carriers have for more than half a century paid the said the Stock Yard Company of Chicago, or its employees, for the use of their loading station, terminals and platforms and the services rendered by them in loading and unloading the said live stock, and for their services in acting as the collecting agents of the carriers named herein, and in collecting the freight charges due to the carriers named herein from members of your petitioner who do business as consignees of and dealers in live stock in and about the stockyards.

VI.

That for many years the tariffs of the Stock Yard Company, which were duly published and filed with the Interstate Commerce Commission, contained the schedule of charges made by that company for the service of loading and unloading live stock at the Union Stock Yards, Chicago, which were as follows:

For loading—50c per car of any capacity;

For unloading—25c per car of any capacity;

that the aforesaid loading and unloading charges were last named and published in the Stock Yard Company's Tariff U. S. Y. & T. Co. No. 2, I. C. C. No. 2, effective June 30, 1913, and which tariff of rates continued in effect until May 21, 1917, when the said terminal charges were increased to the following amounts, as per Stock Yard Company's Tariff, U. S. Y. & T. Co. No. 2, I. C. C. No. 2:

For loading—75c per car of any capacity;

For unloading—50c per car of any capacity;

that the aforesaid tariff having been incorrectly designated with respect to the proper reference numbers, another tariff was issued by said company on April 30, 1917, and effective June 21, 1917, known and designated as U. S. Y. & T. Co. Tariff No. 3, I. C. C. No. 6, which in form and substance read as follows:

"The charge made by this company for the service (as 453 a Carrier's Agent) of loading and unloading Live Stock at the Union Stock Yards, of Chicago, Ill., as follows:

For Loading—75 cents per car of any capacity,

For Unloading—50 cents per car of any capacity."

That thereafter the said Union Stock Yard and Transit Company of Chicago filed its supplement to said last-mentioned tariff, in and by which it proposed to withdraw and cancel said last-mentioned tariff, which said cancellation and withdrawal would, by the terms thereof, have become effective on December 1, 1917, and which said proposed cancellation notice is in words and figures following:

"Effective September 1, 1917, U. S. Y. & T. Co. Tariff No. 3, I. C. C. No. 6, wil be withdrawn and canceled. The loading and unloading platforms of the Union Stock Yard & Transit Company of Chicago will in future be used or available for use by the railways entering Chicago and using them as terminal stations, under operating arrangements."

That in compliance with Investigation and Suspension

Docket No. 1118 of the Interstate Commerce Commission of August 24, 1917, the effective date of Supplement No. 1, U. S. Y. & T. C. Tariff No. 3, I. C. C. No. 6, canceling the said tariff, was postponed by action of the Interstate Commerce Commission until December 30, 1917, and the said tariff ordered to remain in effect during said period of suspension.

That simultaneously with the filing of said notice of cancellation, said Stock Yard Company of Chicago notified each of the common carriers entering the City of Chicago, which are the defendant carriers named in this petition, in words and figures following, to wit:

"Dear Sir:

The Directors of The Union Stock Yard & Transit Company of Chicago have determined to cancel, and have canceled their so-called tariff No. ..... heretofore filed with the Interstate Commerce Commission, and to make a rental charge for the terminal facilities furnished to and used by the lines carrying live stock to and from this market.

The loading and unloading docks and platforms of The Union Stock Yard & Transit Company of Chicago are nothing more or less than the terminals of the lines handling live stock for delivery within this District; and therefore the attempt on the part of the Stock Yard Company to cover the use of these facilities by a tariff, instead of placing the same on an operating basis is and always has been a mistake.

The cancellation notice of the so-called tariff No. ..... becomes effective on the ..... day of ....., 191....., and beginning with that date the U. S. Y. & T. Co. will for the immediate future charge all lines and companies using this company's facilities rental for the use of such facilities, measured by the number of cars handled for the various lines' account, at the rate of 50c for each car delivered into this District, and 75c per car for live stock taken from this District in the cars of carrier lines and loaded or unloaded across this company's docks, platforms and general facilities.

As an incident to the use of the facilities, the Stock Yard Co. will, for those lines which desire to have it do so, 454 continue the actual service of loading and unloading as heretofore, and for the present this service will be included in the rental charge.

Yours truly,

President."

But your petitioner states the fact to be that the defendant carriers determined and agreed among themselves not to pay to the Stock Yard Company of Chicago any sum whatsoever for the use of their terminal facilities, for their unloading docks and platforms, for their services in loading and unloading, and for their services in collecting said tariff bills, but propose to compel your petitioner and the members of your petitioner to pay direct to the Stock Yard Company of Chicago for their services in loading and unloading said cattle.

VII.

That the tariffs published by the defendant carriers or their duly authorized agents and naming rates for the transportation of live stock (of the various kinds the subject matter of this complaint) to and from the Union Stock Yards, Chicago, Illinois, are governed, so far as the Chicago Terminal charges are concerned, by L. A. Lowrey, Agent's Tariff No. 20-J, I. C. C. No. 37 and supplements thereto and reissues thereof, and were so governed prior to this complaint by canceled issues of said Lowrey's tariff.

That all of the defendants other than the Stock Yard Company are parties to or concur in L. A. Lowrey, Agent's Tariff No. 20-J, I. C. C. No. 37, which, on page 72 thereof, provides the basis for rates to and from facilities of the Chicago Junction Railway and for the absorption of the loading, unloading and weighing charges of the Stock Yard Company, by stating that the carriers shown (all of whom are defendants herein) will pay the Stock Yard Company's charges, as follows:

BASIS FOR RATES TO AND FROM FACILITIES OF THE CHICAGO JUNCTION RAILWAY.

To or From the Following Carriers.	Carriers as Shown Will Pay the Union Stock Yards & Transit Co.'s Charges as Follows: Loading Charges. In Cents Per Car.	Unloading Charges. In Cents Per Car.	Weighing Charges. In Cents Per Car. Out-bound.
A. T. & S. F.	50	25	....
B. & O.	50	25	10
B. & O. C. T.	50	25	10
C. & O. of Ind.	50	25	10
C. & A.	50	25	....
C. & E. I.	50	25	....
C. & E.	50	25	10
C. & N. W.	50	25	....
C. B. & Q.	50	25	....
C. C. C. & St. L.	50	25	10
C. G. W.	50	25	....
C. I. & L.	50	25	10
C. M. & St. P.	50	25	....
C. R. I. & P.	50	25	....
C. T. H. & S. E.	50	25	....
G. T.	50	25	10
I. C.	50	25	....
I. H. Belt	50	25	10
M. C.	50	25	10
M. St. P. & S. S. M.	50	25	....
N. Y. C.	50	25	10
N. Y. C. & St. L.	50	25	10
Penna. Co.	50	25	10
P. M.	50	25	10
P. C. C. & St. L.	50	25	10
Wabash	50	25	....

455 VIII.

That the individual tariffs of certain of the defendant carriers contained and now contain similar provisions and schedules and all such tariffs are hereby referred to as though fully set forth herein.

IX.

That for many years the amount of the terminal charges absorbed by the defendant carriers herein exactly correspond with the amounts charged by the Stock Yard Company, but that on May 21, 1917, when the said Company's Tariff No. 2, I. C. C. No. 2, became effective, which increased the loading and unloading charges from 25c and 50c per car, respectively,

to 50c and 75c per car, no corresponding change was made in the aforesaid L. A. Lowrey, Agent's Tariff No. 20-J, I. C. C. No. 37, authorizing the absorption of the said increased charges, although the said tariff of the Stock Yard Company carrying said increased charges provided that:

"The charge made by this company for the service (as a carrier's agent) of loading and unloading live stock at the Union Stock Yards of Chicago, Ill."

and yet certain of the defendant carriers collected from the consignors and consignees shipping from and to said Union Stock Yards, Chicago, the additional 25c per car, which amount was and is being paid under protest pending the determination of the propriety thereof; which additional amount of 25c per car constitutes an increase in all the through rates on live stock to and from Chicago, Ill.

X.

That it being clearly the lawful duty of the defendant common carriers to provide and maintain all adequate and necessary terminal facilities for the receipt and delivery of live stock in the City of Chicago without additional charges, and inasmuch as that fact is recognized by the action of the defendant carriers in absorbing the loading and unloading charges at other live stock markets competing with the Chicago market, where a union terminal for the receipt and delivery of live stock is maintained, the complainant, its members and patrons, are not primarily interested in the amounts charged by the Stock Yard Company to Chicago Lines for the use of their facilities and service, and the question of compensation to the Stock Yard Company is a matter of agreement between itself and its principals. However, the publication and assessment by the Stock Yard Company of this additional charge of 25c per car without a corresponding change in L. A. Lowrey, Agent's Tariff No. 20-J, I. C. C. No. 37, absorbing a similar amount, results in the imposition of charges against the members of the complainant association that are unjust and unreasonable.

456 XI.

That the complainant alleges that the entire question of the amount of compensation and the method of compensating the Stock Yard Company for the performance of the services in

the loading and unloading of live stock at the Union Stock Yards are matters to be adjusted between the Stock Yard Company and the interested Chicago Line, and that therefore the members of the complainant association should not be involved in their controversy or forced to bear the burden thereof; that the entire service should be made the basis of an operating arrangement between the Stock Yard Company and the interested carriers and not the subject matter of published tariff arrangements which involve the shipping public, and that either the proposed tariff of the Stock Yard Company should be allowed to remain in effect and the defendant carriers ordered to amend L. A. Lowrey, Agent's Tariff, whereby said increased charges are absorbed by the interested carriers, or else if the Stock Yard Company is permitted to cancel its aforesaid tariff an order should be issued against the defendant carriers whereby all of their tariffs naming rates on live stock to and from the Union Stock Yards, Chicago, Illinois, will be so amended as to authorize the aforesaid terminal service without additional cost to the shipper above the transportation rates.

XII.

That the defendant carriers are absorbing all loading and unloading charges for all of the cattle and live stock markets of the United States out of their transportation rates.

That the action of the defendant carriers in adding to their transportation rates the additional charge of 25c per car for the loading and unloading service on live stock to and from the Chicago Live Stock Market, located at the Union Stock Yards, Chicago, Illinois, while absorbing such charges at all competing markets, results in an unjust discrimination against complainant's members and patrons and gives to competing markets an undue and unreasonable preference and advantage over the Chicago market which results in much business that was heretofore handled through the Chicago market being diverted to competing markets that are free from such harmful practices of the defendants.

XIII.

That by reason of the facts stated in the foregoing petition compalinant's members and patrons are subjected to the payment of rates and charges for the interstate transportation

aforesaid that are unjust and unreasonable in violation of Section 1, unjustly discriminatory in violation of Section 2, and unduly preferential and prejudicial in violation of
457 Section 3 of the Act to Regulate Commedce aforesaid and results in their direct damage and injury.

Wherefore, complainant, upon belief of itself and its individual members and patrons, prays that the defendant carriers may be severally required to answer the charges herein alleged; and that after due hearing and investigation an order may be made commanding said defendant carriers, and each of them, to cease and desist from the aforesaid violations of said Act to Regulate Commerce and to establish and put in force as maximum for the transportation of live stock between the Union Stock Yards, Chicago, Illinois, and all other points in the United States, the District of Columbia, and adffiacent foreign countries, in lieu of the rates and charges prescribed in the preceding paragraphs, such maximum rates, rules and regulations as the Commission may deem just and reasonable, and to order the defendant carriers to pay to the complainant's members and patrons by way of reparation for the unlawful charges, assessed as hereinbefore alleged, the sum of 25c per car or such other sum as, in view of the evidence to be adduced herein, the Commission shall determine that the complainant's members and patrons are entitled to as an award of damages under the provisions of said act for said violations thereof, and that such other or further order or orders be made as the Commission may consider proper in the premises; and that this complaint be consolidated with Investigation and Suspension Docket, No. 1118, involving similar questions and that both proceedings be set down for hearing at the earliest possible date.

THE CHICAGO LIVE STOCK EXCHANGE,
By EVERETT C. BROWN,
Its President.

SIMS, WELCH & GODMAN,
Attorneys for Complainant,
Marquette Building,
Chicago, Ill.

HARRY C. BARNES,
Of Counsel.

458 Mr. Towner: I might add with respect to Defendants' Exhibit 2 that this is the complaint referred to in paragraph 31 of the stipulation, Defendants' Exhibit 1.

I will offer as Defendants' Exhibit 3 the complaint of the

Chicago Live Stock Exchange before the Commission, filed in Docket 12614, that being the complaint that is referred to in paragraph 37 of the stipulation, Defendants' Exhibit 1.

The Court: Any objection?

Mr. Godman: No.

The Court: It may be admitted.

Whereupon said document, marked DEFENDANT'S EXHIBIT 3, was received in evidence, and is in the words and figures as follows, to-wit:

459 BEFORE THE INTERSTATE COMMERCE COMMISSION Defendant hibit 3

I. C. C. Docket, No. 12614.

The Chicago Live Stock Exchange,
Complainant,

vs.

John Barton Payne, Director General,
as Agent, *et al.*,
Defendants.

COMPLAINT.

SIMS, WELCH & GODMAN,
Attorneys.

S. B. STAFFORD,
President.

D. C. MOSIER,
Chairman Transportation Committee.

C. R. HILLYER,
H. R. PARK,
Of Counsel.

808 Marquette Building, Chicago, February 23, 1921.

460 BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket, No. 12614.

The Chicago Live Stock Exchange,
Complainant,

vs.

John Barton Payne, Director General, as Agent; The Atchison, Topeka & Santa Fe Railway Company, The Baltimore & Ohio Railroad Company, Baltimore & Ohio Chicago Terminal Railroad Company, The Chesapeake & Ohio Railway Company of Indiana, The Chicago & Alton Railroad Company, Chicago & Eastern Illinois Railroad Company, and W. J. Jackson, Receiver, Chicago & Erie Railroad Company, Chicago & Northwestern Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railroad Company, Chicago, Indianapolis & Lousville Railway Company, Chicago Junction Railway Company, Chicago, Milwaukee & St. Paul Railway Company, The Chicago, Rock Island & Pacific Railway Company, Chicago, Terre Haute & Southeastern Railway Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Grand Trunk Western Railway Company, Illinois Central Railroad Company, Indiana Harbor Belt Railroad Company, The Michigan Central Railroad Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, New York Central Railroad Company, New York, Chicago & St. Louis Railroad Company, The Pennsylvania Railroad Company, The Pennsylvania Railroad Company, Western Lines, Pere Marquette Railway Company, The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company, The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and Harry A. Dunn, Receivers, Union Stock Yard & Transit Company, Wabash Railway Company,

Defendants.

461 COMPLAINT.

I.

Now comes the Complainant in the above-entitled proceeding and states:

That the Chicago Live Stock Exchange is an association of persons, firms, and corporations incorporated under the

laws of the State of Illinois; that its membership consists of livestock commission merchants and owners and raisers of cattle engaged in the buying, selling, receiving, and shipping of livestock in interstate and foreign commerce and principally in receiving livestock at the Union Stock Yards for the purpose of being marketed there; that the said association represents every shipper and receiver of livestock at every station in the United States shipping to and from the public livestock market located at the Union Stock Yards in the city of Chicago; that the shipments of livestock, consisting of cattle, calves, swine, sheep, lambs, and goats, are consigned to the individual members of complainant association, or are by them shipped to and between points in the several States and the District of Columbia and between points in the United States and points in foreign countries, and that such shipments in interstate and foreign commerce are made over the lines of the defendant carriers, and that this complaint is brought on behalf of the members of complainant association severally and collectively and on behalf of the owners, consignors, and consignees of shipments of said livestock to and from said Union Stock Yards.

II.

That defendant John Barton Payne, Director General of Railroads, as agent, is an officer of the United States,
462 designated by the President pursuant to the provisions of section 206 of the Transportation Act, 1920; that the railroads and systems of transportation over whose lines or routes the rates, rules, and practices complained of herein applied during federal control were operated by the Director General of Railroads, were all of the railroads above named except the Union Stock Yard and Transit Company; that the defendants above named, other than the Director General, are common carriers engaged in the transportation of property wholly by railroad from points in the various States of the United States to Union Stock Yards, Chicago, and from the Union Stock Yards to numerous points in the various States and to points in foreign countries, and as such common carriers are subject to the provisions of the Interstate Commerce Act, the Federal Control Act, and the Transportation Act.

III.

That complainant filed a complaint with this Commission in the fall of 1917 under Docket No. I. C. C. 9977. It is requested that this complaint be consolidated with docket 9977.

Among the other allegations contained in said complaint it was alleged that effective May 21, 1917, under the Union Stock Yards & Transit Company's tariff, I. C. C. No. 2, the defendants were collecting from the consignors and consignees shipping carloads of livestock to or from the Union Stock Yards, as a loading or unloading charge, 25 cents per carload, which amount was paid under protest pending the determination by this Commission of the lawful character of said charge to the consignors and consignees.

It was further alleged that the exaction from the consignors and consignees of said charge resulted in unlaw-
463 ful and unreasonable and unjustly discriminatory charges.

Said complaint further alleged that the members of said Chicago Live Stock Exchange represent every shipper and receiver of livestock at every station in the United States shipping to and from the Public Live Stock Market located at the Union Stock Yards in the city of Chicago, Illinois; that the collection of said loading and unloading charges from the shippers and consignees, as aforesaid, resulted in their direct damage and injury.

An order was prayed for requiring the defendants to pay to the complainant's members and their patrons, by way of reparation for the unlawful charges assessed, the sum of 25 cents per carload, as an award of damages under the provisions of said act for said violations thereof, upon each carload of livestock unloaded or loaded during the period hereinafter described.

A hearing was held upon said complaint, and also upon the Commission's Investigation and Suspension Docket, No. 1118, which involved similar issues, and a report and decision of the Commission was rendered February 11, 1919.

Upon petition of interested parties the proceeding in I. & S. Docket, No. 1118, and I. C. C. Docket No. 9977, was reopened for further hearing for the purpose of determining, among other things, the amount of the loading and unloading charges, if any, that should be imposed upon shippers of livestock or should be absorbed by the defendants.

The Director General of Railroads, as agent, was duly made a party defendant.

The report of the Commission on further hearing ren-
464 dered June 15, 1920, found, among other things, that the services of loading and unloading are part of the transportation of livestock and the collection of separate charges from shippers for loading and unloading, in addition to the rates on livestock from and to interstate points to and from the stock yards, was an unlawful and unreasonable practice. There was a finding as to reparation made by the Commission as follows:

"We further find that shippers who paid and bore charges for unloading and loading livestock at the stockyards in addition to the rates to and from the stockyards, and who are parties of record herein, have been damaged in the amount of such charges and are entitled to reparation, with interest from the date of such payment. The exact amount of reparation due each shipper cannot be determined on this record, and they should comply with Rule V of the rules of practice."

At the conclusion of the rehearing permission was granted by the Commission to file of record the names of the parties entitled to reparation. A list of names was transmitted to the Commission and the receipt of said list was duly acknowledged by the Commission.

IV.

That the names of the individuals, firms, and corporations, members of the Chicago Live Stock Exchange, are as follows:

Adams & Kitchen.
Adler Sons & Co.
Alexander, Conover & Martin.
Baker, Heyne & Co.
A. Burnett & Co.
Brown, St. John Co.
Bronson & Ettlinger.
Bowles Live Stock Commission Co.
Bunker & Swiney.
Byers Bros. & Co.
John A. Babcock.
Thomas H. Brown.

J. B. Cahill & Co.
Clark Armbrecht & Co.
465 Clay Robinson & Co.
Clark Bowles & Co.
Conklin Bros. Commission Co.
Cochran & Henneberry.
H. D. Copeland & Co.
Cross Sommers & Co.
Central Live Stock Commission Co.
J. R. Clegg & Co.
W. P. Collings & Co.
A. B. Daniels.
J. F. Deutsch & Co.
J. M. Doud & Co.
Drivers Commission Co.
S. S. Driver & Co.
James W. Eastland & Co.
Emmett, Wheeler & Polley.
Evans, Snider, Buel Co.
Filler, Wilson & McClelland.
Freeman Fitzgerald & Co.
Freeland & Godfrey.
Fred Freeman.
Wm. Gentleman & Sons.
Gillogly & Co.
Hansman, Thompson & Ball.
G. H. Hogan & Co.
C. E. Harding & Co.
Hefner Commission Co.
Iowa Live Stock Commission Co.
C. A. Ingwersen.
Ingwersen Bros.
Knettle Bros.
Knollin Sheep Commission Co.
Kuenster Live Stock Commission Co.
Lee Live Stock Commission Co.
F. C. Ludeman.
Marten Bros. & Co.
Mullen Commission Co.
Miller Dolan & Co.
Miller White & Woods.
Maley Carpenter & Co.
Minteer Hubbard & Co.
Murray & McDowell.

McCausland Hoag & Vaughn.
Moog & Greenwald.
J. J. Mahoney.
National Live Stock Commission Co.
Northwestern Live Stock Commission Co.
North American Live Stock Commission Co.
Nixon Horn & Chisholm.
Silas Palmer & Son.
J. Patterson & Son.
Peterson Turnbull & Co.
A. Piatt & Co.
Paris Commission Co.
Pritchard Commission Co.
Rice Bros.
Rosenbaum Bros. & Co.
Roach Live Stock Commission Co.
Abe Russell & Co.
Stafford Bros.
Stephens & Boble.
L. Spencer & Co.
Standard Live Stock Commission Co.
Swanson-Gilmore & Castenholz.
466 Sinclair Gillett & Co.
W. W. Shearer & Co.
Shinn Fry & Co.
W. R. Smith & Son.
Starrett Mathison & Co.
H. M. Saunders.
A. F. Steward & Co.
Sullivan Commission Co.
Harry Sherwood & Son.
W. E. Young & Co.
L. B. Yancey & Co.
L. B. Werden.
Jet Wimp & Co.
Curtis A. Wood & Co.
A. Wainwright.
W. W. Wilson & Co.
Wood Bros.
Walter Bros.
Walters & Dunbar.
G. B. Van Norman & Co.
Van Norman, Lawler & Co.
Trout Live Stock Commission Co.

Tipton Steck & Herrick.
Jas. G. Shutter.
Frank W. Sheldon Commission Co.

467 That said above-named individuals, firms, copartnerships and corporations on their own behalf, as consignees of inbound shipments or as consignors of outbound shipments, or as factors or agents for the consignors of inbound shipments or as factors or agents for the consignees of outbound shipments, paid to defendants each and all of the charges complained of as unlawful, as shown by their books and records, and charged said amounts of payments for loading and unloading in their accounts sales against the consignors and consignees.

V.

There is filed herewith and made a part hereof and marked Appendix A, a list which gives the names of individuals, copartnerships and corporations, the address of each of which is, care of Chicago Live Stock Exchange, Union Stock Yards, Chicago, Ill. This list includes the names of additional shippers not now included in the record, and also the names of shippers already filed of record, and also the names of shippers who made intrastate shipments during the period of Federal control, who, together with the parties named in paragraph II hereof, paid and bore the unreasonable and unlawful charge of 25 cents per carload for loading and unloading livestock at the Union Stock Yards at Chicago; that these charges were paid by the parties named in paragraph II hereof and in said appendix beginning, approximately, May 17, 1917, and extending to aproximately March 1 or April 1, 1920; that the carload shipments of livestock in question were made and were delivered or tendered for delivery or shipment approximately between the dates above named; that the said shipments of livestock originated at various points in the United States and especially throughout the farming regions of the southern and western territories, including the States
468 of Illinois, Indiana, Ohio, Michigan, Wisconsin, Iowa, Missouri, Arkansas, Minnesota, North Dakota, South Dakota, Montana, Idaho, Kansas, Nebraska, Wyoming, Colorado, Oklahoma, Texas, Arizona, New Mexico, Utah, Washington, Canada, West Virginia, Virginia, Kentucky, Tennessee, and were transported by rail to the Union Stock Yards

over the rails of the defendants for a substantial portion of the haul and were delivered at the Union Stock Yards in the trains of said defendants or were tendered for shipment at the Union Stock Yards to defendants for shipment to the States above named and New York, Massachusetts, Rhode Island, Connecticut, Maine, New Jersey, District of Columbia, Maryland, Pennsylvania, Canada; that lists of said shipments have been prepared showing the date of delivery, the car initial and number, the waybill number and date, the originating station, consignor, consignee, route, commodity and amount of reparation claimed; that the exact character of the information contained upon said lists was submitted to the Commission for its approval and the Commission did so approve the exact form and substance of such lists of shipments; that said lists of shipments are now completed and copies have been delivered to the Commission, and copies are now ready for submission to the defendants under Rule V; that the claims in question involve simply the charge which was made by the delivering or originating defendants and the Union Stock Yard & Transit Company, defendant, at the Union Stock Yards; that only this single extra charge to the consignors and consignees for loading and unloading is herein involved, that the facts herein alleged specifically apply as well to shipments from the stock yards and which were loaded at the stock yards and the unlawful charges for loading assessed thereon; and to shipments of livestock unloaded at the Union Stock Yards and the unlawful charges for unloading assessed thereon; that such additional proof as may be required will be made at a further hearing or by stipula-
469 tion or in any manner that may be required; that the amount of the claim in each instance is 25 cents per car both for cars that were loaded and for cars that were unloaded at the Union Stock Yards during the period above named; that because the amount involved consists of this single charge, it is not necessary to give further details with respect to individual shipments.

VI.

That the filing of this complaint is necessary in order to bring before the Commission the shipments made since the date of filing of the original complaint, the date of the second hearing, and the date of the filing of the list of shippers un-

der the Commission's ruling, and the shippers making shipments within the State of Illinois during the entire period of Federal control.

VII.

That by reason of the facts stated in the foregoing paragraphs, the shippers, consignors and consignees of livestock to and from the Union Stock Yards, Chicago, Illinois, shown in Appendix A hereto, and in paragraph II hereof, have been subjected to the payment of charges for loading and unloading livestock at the Union Stock Yards which were when exacted and still are unjust and unreasonable and in violation of section 1 of the Interstate Commerce Act and section 10 of the Federal Control Act, and otherwise unlawful and in violation of section 6 of the Interstate Commerce Act, and unjustly discriminatory and unduly prejudicial in violation of section 3 of the Interstate Commerce Act.

470 Wherefore, on behalf of the members of the Chicago Live Stock Exchange, set forth in paragraph II hereof, who were all consignors or consignees of all of the shipments here involved and as such were the factors and agents of the owners and shippers of said livestock shown in Appendix A and who make claim for the use and benefit of the owners of said livestock who finally paid and bore the unlawful and unreasonable charges complained of; or directly on behalf of the shippers shown in Appendix A;

Complainant prays that defendants be severally required to answer the charges herein; that a further hearing be had if found necessary by the Commission, in order to make further proof of the payment of charges and the bearing of the charges by said shippers; that said defendants be required to pay to the individual firms or corporations members of the Chicago Live Stock Exchange as factors and agents for the use and benefit of the individuals, firms and corporations shown in Appendix A, or directly to said parties shown in Appendix A, by way of reparation for unlawful and unreasonable charges hereinbefore alleged, such sum or sums as in view of the evidence to be adduced herein the Commission shall determine said parties are severally entitled to recover as an award of damages, including interest, under the provisions of said Acts for violations thereof, and that such fur-

ther order or orders be made as the Commission may consider proper in the premises.

SIMS, WELCH & GODMAN,
Attorneys,

S. B. STAFFORD,
President.

D. C. MOSIER,
Chairman Transportation Committee.

C. R. HILLYER,
H. R. PARK,
Of Counsel.

Dated at Marquette Building, Chicago, Ill., February 23, 1921.

471 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 4 an order of the Interstate Commerce Commission, dated April 8, 1922, re-opening Docket 9977 and 12614 for further hearings. That is the one that is referred to in paragraph 38 of the stipulation which was put in as Defendants' Exhibit 1.

The Court: Admit it.

Whereupon said document marked DEFENDANTS' EXHIBIT 4 was received in evidence, and is in the words and figures as follows, to-wit:

472 At a General Session of the Interstate Commerce Commission, held, at its office in Washington, D. C., on the 8th day of April, A. D., 1922.

Defend Hibi

No. 9977

The Chicago Live Stock Exchange

vs.

Atchison, Topeka & Santa Fe Railway Company, *et al.*

No. 12614

The Chicago Live Stock Exchange

vs.

Director General, As Agent
Atchison, Topeka & Santa Fe Railway Company, *et al.*

Upon consideration of the record in Docket 9977, and ap-

plication for further hearing filed on behalf of complainant therein,

It Is Ordered, That this proceeding be and it is hereby reopened for further hearing to afford complainants and intervenors opportunity to offer proof with respect to damage.

It Is Further Ordered, That Docket 9977 be and it is hereby consolidated with Docket 12614, the two cases to be assigned for hearing at a time and place to be hereafter fixed by the Commission; and,

It Is Further Ordered, That a copy of this order be served upon all parties to the above-entitled proceedings.

By the Commission:

GEORGE B. McGINTY,
(Seal) *Secretary.*

473 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 5 a transcript of testimony taken before the Interstate Commerce Commission on November 8, 1917, in investigation and Suspension Docket 1118, that being matter covered by the stipulation Defendants' Exhibit 1.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 5, being a stenographic transcript of testimony taken before the Interstate Commerce Commission on November 8, 1917, in Investigation and Suspension Docket No. 1118, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 5 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

474 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 6 transcript of testimony taken before the Interstate Commerce Commission at Chicago, March 13th to March 16th, both inclusive, 1918, in Docket No. 9977 and Investigation and Suspension Docket No. 1118, this being another volume of the transcript referred to in the stipulation.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 6, being a stenographic transcript of testimony taken before the Interstate Commerce Commission at Chicago March 13th

to March 16th, both inclusive, 1918, in Docket No. 9977 and Investigation and Suspension Docket No. 1118, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 6 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

475 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 7 a transcript of the testimony taken before the Interstate Commerce Commission on May 20th to 22nd, inclusive, 1919, at Chicago, Docket No. 9977, this being another volume of the transcript referred to in the stipulation.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 7, being a stenographic transcript of testimony taken before the Interstate Commerce Commission on May 20th to 22nd, inclusive, 1919, at Chicago, Docket No. 9977, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 7 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

476 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 8 a transcript of the testimony taken before the Interstate Commerce Commission at Chicago on July 14, 1921, in Docket No. 12614. I might add that this is the volume of the transcript that has been heretofore marked Defendants' Exhibit 1, for identification.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 8, being a stenographic transcript of testimony taken before the Interstate Commerce Commission at Chicago on July 14, 1921, in Docket No. 12614, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 8 is, by order of

the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

477 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 9 a transcript of the testimony taken before the Interstate Commerce Commission on October 3rd to 6th, inclusive, 1922, at Chicago, Docket 9977 and 12614, being another volume of the transcript referred to in the stipulation.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 9, being a stenographic transcript of testimony taken before the Interstate Commerce Commission on October 3rd to 6th, inclusive, 1922, at Chicago, in Docket No. 9977 and No. 12614, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 9 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

478 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 10 a transcript of the testimony taken before the Interstate Commerce Commission at Chicago, October 9, 1922, in Docket 9977 and 12614, being another volume of the transcript referred to in the stipulation.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 10, being a stenographic transcript of testimony taken before the Interstate Commerce Commission at Chicago on October 9, 1922, in Docket No. 9977 and No. 12614, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 10 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

479 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 11, transcript of testimony taken at Chicago on

November 6th to November 9th, inclusive, 1922, before the Interstate Commerce Commission, Docket 9977 and 12614, that being another volume of the transcript referred to in the stipulation.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 11, being a stenographic transcript of testimony taken at Chicago on November 6th to November 9th, inclusive, 1922, before the Interstate Commerce Commission, in Docket No. 9977 and No. 12614, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 11 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

480 Mr. Towner: By way of explanation of these exhibits I will say that the stipulation which was put in as Defendants' Exhibit 1, authorized the introduction of not only all the transcript of the testimony taken before the Interstate Commerce Commission, but also all of the exhibits that were offered upon that hearing. In conformity with that stipulation, I will offer as DEFENDANTS' EXHIBIT 12 the documents offered before the Commission at page 139 of the transcript of the hearing on March 13th to March 16th, 1918, known as Mosier's Exhibit No. 1.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 12, being the 52nd annual live stock report of the Union Stock Yards and Transit Company for 1917, a summary for the years 1865 to 1917, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 12 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

481 Mr. Towner: I will next offer as DEFENDANTS' EXHIBIT 13 Hinkle's Exhibit 1 offered in the hearings before the Commission at page 300 of the transcript of hear-

ings March 13th to March 16th, 1918, which is the act of incorporation of the Stock Yards Company.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 13, which is the act of incorporation of the Union Stock Yard and Transit Company of Chicago, one of the defendants herein, and which was offered in the hearings before the Interstate Commerce Commission March 13th to March 16th, 1918, at page 300 of the transcript of testimony taken at said hearing and in said hearing was marked Hinkle's Exhibit 1, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 13 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

482 Mr. Towner: I will offer in evidence as DEFENDANTS' EXHIBIT 14 the document introduced in the hearings before the Commission as Hinkle's Exhibit No. 2, that document being offered at page 302 of the hearing of March 13th, 1918, and is a copy of the minutes of the meeting of the Board of Directors of the Union Stock Yards and Transit Company, held in Chicago March 2, 1865.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 14, being a copy of the minutes of the meeting of the Board of Directors of the Union Stock Yard and Transit Company held in Chicago, March 2, 1865, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 14 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

483 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 15 a copy of the document offered as Hinkle's Exhibit No. 3 at page 303 of the transcript of the hearing before the Commission on March 13, 1918.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 15, being a copy of the minutes of a meeting of the Board of Directors of the Union Stock Yard & Transit Company held on March 4, 1865, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 15 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

484 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 16 the document introduced as Hinkle's Exhibit 4 in the hearing before the Commission at page 304 of the transcript of March 13, 1918.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 16 being a copy of the minutes of a meeting of the Board of Directors of the Union Stock Yard & Transit Company held on January 17, 1866, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendant's Exhibit 16 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

484½ Mr. Towner: I offer as DEFENDANTS' EXHIBIT 17 document which was introduced as Hinkle's Exhibit 5 at page 305 of the transcript of evidence before the Commission on March 13, 1918.

The Court: Admit it.

Mr. Towner: That is a matter of some interest. It is a meeting held in Chicago on October 18, 1867, of the Directors of the Stock Yards Company, at which the loading charge of twenty-five cents and unloading charge of fifty cents per car was first established.

Whereupon said document marked Defendants' Exhibit 17, being a copy of the minutes of a meeting of the Board of Directors of the Union Stock Yards & Transit Company held on October 18, 1867, was received in evidence and is here incorporated in this Bill of Exceptions by reference and

hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 17 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

485 Mr. Towner: I will offer in evidence as DEFENDANTS' EXHIBIT 18 the document which was introduced in the hearings before the Commission as Hinkle's Exhibit No. 6, at page 313 of the transcript of March 13, 1918, which is a copy of the lease of the railroad of the Stock Yards Company to the Chicago and Indiana State Line Railroad, dated December 15, 1897.

Whereupon said document marked Defendant's Exhibit 18, being a copy of the lease of the railroad of the Stock Yards Company to the Chicago and Indiana State Line Railroad, dated December 15, 1897, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 18 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

486 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 19 the document introduced in the hearings before the Commission as Hinkle's Exhibit No. 7 at page 313 of the transcript of the hearing of March 13, 1918, which is an agreement of consolidation between the Chicago, Hammond and Western Railroad Company and the Chicago and Indiana State Line Railroad Company, dated January 1, 1898.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 19, being an agreement of consolidation between the Chicago, Hammond and Western Railroad Company and the Chicago and Indiana State Line Railroad Company, dated January 1, 1898, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 19 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by

the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Cifcuit as an original exhibit in lieu of a copy thereof.

487 Mr. Towner: I will introduced as DEFENDANTS' EXHIBIT NO. 20 the document introduced in the hearings before the Commission as Hinkle's Exhibit 8, at page 314 of the transcript of testimony at the hearing of March 13, 1918, which is a copy of the lease in perpetuity from the Stock Yards Company to the Chicago Junction Railway Company, and covers all of the railroad track owned by the defendant Stock Yards Company, and is dated December 1, 1913.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 20, being a copy of a lease in perpetuity from the Union Stock Yards and Transit Company to the Chicago Junction Railway Company, covering all of the railroad track owned by the Union Stock Yards and Transit Company, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 20 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

488 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT NO. 21 the document introduced in the hearings before the Commission on March 3, 1918, at page 666 of the transcript and there identified as Coffey's Exhibit No. 1, and which is a copy of account sales issued by the National Live Stock Commission Company on some cattle sold on Monday, December 17, 1917.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit No. 21, which is a copy of account sales issued by the National Live Stock Commission Company on cattle sold on Monday, December 17, 1917, and which document was introduced in the hearings before the Interstate Commerce Commission on March 3, 1918, at page 666 of the transcript of the testimony of said hearing as Coffey's Exhibit No. 1, was received in evidence and is here incorporated in this Bill of

Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit No. 21 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

489 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 22 a copy of the document introduced in the hearings before the Interstate Commerce Commission as Coffey's Exhibit No. 2, at page 667 of the transcript of March 13, 1918, which said document is a copy of a Santa Fe waybill showing a great variety of stuff.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 22, which is a copy of a Santa Fe waybill which was introduced in the hearings before the Interstate Commerce Commission as Coffey's Exhibit No. 2, at page 667 of the transcript of March 13, 1918, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 22 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

490 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT NO. 23 a photograph of the loading and unloading of stock at the Stock Yards, which was introduced before the Commission as Park's Exhibit No. 1, upon the hearing of May 20, 1919, at page 855 of that transcript.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit No. 23, being a photograph of the loading and unloading of stock at the Union Stock Yards, and which was introduced before the Interstate Commerce Commission as Park's Exhibit No. 1, upon the hearing of May 20, 1919, page 851 of that transcript, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit No. 23 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the

Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

491 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 24 a copy of the document introduced in the hearings before the Commission as Park's Exhibit No. 2, at page 855 of the transcript taken on May 20, 1919, and which is another photograph of the unloading facilities at the Stock Yards.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 24, being a photograph of the unloading facilities of the Stock Yards, which had been introduced in the hearings before the Interstate Commerce Commission on May 20, 1919, at page 855 of the transcript as Park's Exhibit No. 2, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 24 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

492 Mr. Godman: I understand all of these are being offered on behalf of both defendants.

Mr. Towner: All of these are being offered on behalf of both defendants.

Mr. Towner: I offer as DEFENDANTS' EXHIBIT 25 an airplane picture of the premises of the Union Stock Yards and Transit Company, which was offered in the hearings before the Interstate Commerce Commission at page 870 of the transcript of the hearing of May 20, 1919, and there marked as Park's Exhibit No. 3.

The Court: Admit it. Show the photographs to the jury.

Whereupon said document marked Defendants' Exhibit 25, being an airplane picture of the premises of the Union Stock Yards and Transit Company, which was offered in the hearings before the Interstate Commerce Commission at page 870 of the transcript of the hearing of May 20, 1919, and there marked as Park's Exhibit No. 3, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to

the same extent as though fully set out herein. Said Defendants' Exhibit 25 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

493 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT 26 the document introduced in the hearings before the Interstate Commerce Commission as Park's Exhibit No. 4, at page 877 of the transcript of the hearing of May 20, 1919, which is a blue print showing the unloading docks in good shape.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 26, being a blue print showing the unloading docks in good shape, which was introduced in the hearings before the Interstate Commerce Commission as Park's Exhibit No. 4, at page 871 of the transcript of the hearing of May 20, 1919, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 26 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

494 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT NO. 27 the document introduced before the Commission as Hinkle's Exhibit No. 1, at page 931 of the transcript of the hearing on May 20, 1919, said exhibit being a two-page small map showing the Chicago Junction Railway Company and the connections between the junction and the line-haul carriers into the Yards.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit No. 27, which is a black print map showing the Chicago Junction Railway and the connections between the Chicago Junction Railway and the line-haul carriers into the Union Stock Yards, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit No. 27 is, by or-

der of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

495 Mr. Towner: I will now offer as DEFENDANTS' EXHIBIT 28 the document introduced in the hearings before the Commission as Hinkle's Exhibit No. 2, page 932 of the hearings of May 20, 1919, which is another small scale map showing the Stock Yards Company property and the railroads surrounding it.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 28, being a small scale map showing the Union Stock Yards and Transit Company property and the railroads surrounding it, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 28 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

496 Mr. Towner: I offer as DEFENDANTS' EXHIBIT NO. 29 a document of three pages, which is a statement of the labor cost of loading and unloading live stock at the Stock Yards in 1917 and 1918 and the first three months of 1919, and which was introduced in the hearings before the Commission as Hinkle's Exhibit 3, 4 and 5, page 943 of the transcript of the hearing of May 20, 1919. I might explain that in the hearings before the Commission each page of this document was marked as an exhibit.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit No. 29, which is a statement of the labor cost of loading and unloading live stock at the Stock Yards in 1917 and 1918 and the first three months of 1919, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit No. 29 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of

Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

497 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT NO. 30 the document introduced in the hearings before the Commission as Hinkle's Exhibit No. 6, at page 961 of the transcript of May 20, 1919.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 30, being a copy of a letter dated April 25, 1919 from The Union Stock Yard & Transit Company to Winston Strawn & Shaw, Chicago, reporting result of an inspection made of the Way Bills on stock arriving at Stock Yards April 24, 1919, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 30 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

498 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT NO. 31 the document introduced in the hearings before the Commission as Hinkle's Exhibit No. 7, at page 963 of the transcript of May 20, 1919.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit No. 31, consisting of two pages, being a statement of cars received at the stockyards April 23 to 30, inclusive, 1919, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 31 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

499 Mr. Towner: I will next offer in evidence as DEFENDANTS' EXHIBIT NO. 32 the document introduced in the hearings before the Commission as Hinkle's Exhibit No. 8, at page 1157 of the transcript of hearing of May 20, 1919, which is a statement showing the cost of load-

ing and unloading the live stock at the Stock Yards in Chicago in March of 1919.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 32, being a statement showing the cost of loading and unloading the livestock at the Stock Yards in Chicago in March, 1919, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 32 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

500 Mr. Towner: I will next offer in evidence as DEFENDANTS' EXHIBIT 33 a copy of a document received in the hearings before the Commission as Hinkle's Exhibit No. 9, page 1157 of the transcript of hearing of May 20, 1919, which is a similar statement showing the cost of loading and unloading livestock at the Yards in April, 1919.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 33, being a statement showing the cost of loading and unloading livestock at the Stock Yards in April, 1919, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 33 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

501 Mr. Towner: I will next offer as DEFENDANTS' EXHIBIT 34 two documents introduced in the hearings before the Commission as Park's Exhibits A and B, page 1096 of the hearing of May 20, 1919, which are two bill stubs issued by the Illinois Central Railroad showing the charges on the shipment.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 34, being a photostatic copy of two bill stubs issued by the Illinois Central Railroad showing the charges on the ship-

ment, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 34 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

502 Mr. Towner: I will next offer as DEFENDANTS' EXHIBIT NO. 35 the document introduced in the hearings before the Commission as Beyer's Exhibit No. 1, which exhibit was introduced on May 22nd and is referred to in the transcript of the hearing beginning May 20, 1919. I don't know the exact page. This exhibit is rate advice 901, issued by the United States Railroad Administration on November 25, 1918.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit No. 35, which is a copy of rate advice 901 issued by the United States Railroad Administration on November 25, 1918, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit No. 35 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

503 Mr. Towner: I will next introduce as DEFENDANTS' EXHIBIT 36 a document introduced in the hearing before the Commission as Mosier's Exhibit No. 1. This exhibit was offered and received in the transcript taken on July 14, 1921, in Docket 12614, and purports to be a blank headed "Reparation—Chicago Live Stock Exchange Loading and Unloading Case."

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 36, which is a copy of a blank headed "Reparation, Chicago Live Stock Exchange Loading and Unloading Case," was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Ex-

hibit 36 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

504 Mr. Towner: I will now offer in evidence as DEFENDANTS' EXHIBIT 37 one of the papers contained in the white box over here (indicating). We have already talked about it. Those papers were introduced as Exhibit 1-A, page 44 of the hearing before the Commission held on October 3, 1922. I might add, Your Honor, that that Exhibit 1-A which is contained in that box consists of a good many thousand separate sheets, and I don't know just how it will be marked, but I would suggest, if it is agreeable, that we have the box marked at least.

The Court: I was going to say to mark the box.

Mr. Towner: I think I will ask the reporter to step over to the box and mark it.

The Court: Admit it.

Whereupon said box marked Defendants' Exhibit 37, which is a large pine box, and the contents thereof, consisting of several thousand separates sheets on which are listed the shipments upon which the Commission found that unlawful charges were collected, each shipment being identified in the exhibit by car number, waybill number, date of delivery, originating station, name of consignor and name of consignee, and which was identified as Exhibit 1-A before the Commission, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 37 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

505 Mr. Towner: Now, Your Honor, in the hearings before the Commission held in October, 1922, beginning October 3, 1922, and in November, 1922, beginning on November 6, 1922, the following exhibits were introduced:

Exhibit 2-A at page 99 of the hearing of October 3, 1922;

Exhibit 3-A at page 120 of the hearings of October 3, 1922;

Exhibit 4-A at page 165 of the hearing of October 3, 1922;

Exhibits 5-A, 6-A and 7-A, at page 623 of the hearing of October 3, 1922;

Exhibit 9-A at page 1111 of the hearing of November 6, 1922;

Exhibit 10-A at page 1115 of the hearing of November 6, 1922.

Those exhibits all related to certain claims made by certain packing houses. Those packing houses are not plaintiffs in this suit and it is agreed and has been agreed between counsel that those exhibits offered before the Commission need not be introduced here, for the reason that they have no bearing upon any issue involved in this case, and have nothing whatever to do either with the claim of the plaintiffs or with the defense of the defendants. They were solely statements of the amounts of the claims of these packing houses who are not plaintiffs here. That is agreed to, it is not, Mr. Hillyer?

Mr. Hillyer: That is right.

506 And afterward, to wit, on January 9, 1930, the following proceedings were had:

Mr. Towner: When we concluded yesterday, Your Honor, we had just made an agreement with counsel for the plaintiff with respect to certain exhibits that were offered before the Commission, and were not offered here, for the reason that they did not pertain to any issue involved in this suit. With the agreement of counsel I would like to enlarge that stipulation somewhat. It relates to Exhibits 2-A, 3-A, 4-A, 5-A, 6-A and 7-A, offered on the hearing of October 3, 1922, before the Commission, and Exhibits 9-A and 10-A offered on the hearing of November 6, 1922, before the Commission. The agreement that was made yesterday was that these exhibits were nothing but statements of the amounts of the claims of certain packing companies which had intervened in the proceedings before the Commission, and that they need not be introduced here for the reason that they had no bearing on the issues involved in this case. With the agreement of counsel I would like to enlarge that stipulation so that it may be understood that these exhibits referred to yesterday, and which I have just listed, were also exhibits filed with the Commission, but they had no relation to, and did not pertain in the proceedings before the Commission to any claim made before the Commission by the plaintiffs in this suit and which are involved in the action that we are now trying; is that agreeable, Mr. Hillyer?

Mr. Hillyer: We will agree to that.

Mr. Towner: And Mr. McLaughlin suggests we might add

that these exhibits had no bearing upon any issue involved in this suit, is that your understanding, Mr. Hillyer?

507 Mr. Hillyer: Well, they were part of the claim and that part of the claim has been paid.

Mr. Towner: But they were merely lists of claims; what I mean is, Mr. Hillyer, they have no bearing upon any issue here, in respect to any issue in this case, because their sole pertinency was with respect to the amount of the claims of certain packing companies and those claims are not involved in this case.

Mr. Hillyer: I think we will stand on your original statement, Mr. Towner.

Mr. McLaughlin: I don't know whether that is sufficient or not. The purpose of this stipulation is to avoid putting in this record the exhibits that have no bearing upon any issue to be determined, and I am not quite sure whether that is broad enough or not.

Mr. Towner: We both agreed, that is counsel for the plaintiff and ourselves, have both agreed as to the effect that we desire to produce by the stipulation. Now the effect we desire to produce is that not only do these particular exhibits have nothing to do with the issue in this lawsuit, but that they also had nothing to do with the claims presented by the plaintiff to the Interstate Commerce Commission, that is the claim presented by these plaintiffs to the Interstate Commerce Commission, that is correct, is it not, Mr. Hillyer?

Mr. Hillyer: Yes.

Mr. McLaughlin: That I think is broad enough. The purpose is to try to complete the testimony here for the purpose of the higher court in case we should go there.

508 Mr. Towner: I will offer as DEFENDANTS' EXHIBIT No. 38 the document introduced in the hearings before the Commission as Clark's Exhibit 8-A, offered on page 1049 of the hearing of November 6, 1922.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 38, being a copy of an assignment dated February 23, 1918, from R. B. Bowles to E. A. Clark conveying all of the interest of R. B. Bowles in the firm of Clark Bowles & Co., was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 38 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States

District Court for the Northern District of Illinois to the United State Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

509 Mr. Towner: I will next offer as DEFENDANTS' EXHIBIT 39 a document introduced in the hearings before the Commission as Boothroyd's Exhibit 11-A, page 1150 of the hearing of November 6, 1922, which is a copy of the bill of sale made by C. F. Paris to C. H. Boothroyd Company. There is also the succession of interest with respect to that claim made by him individually.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 39, which is a copy of a Bill of Sale from C. F. Paris to C. H. Boothroyd dated April 7, 1919, conveying all of the interest of C. F. Paris in the Paris Commission Company, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 39 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

510 Mr. Towner: I will next offer as DEFENDANTS' EXHIBIT 40 the document introduced in the hearing before the Commission as Weightman's Exhibit 12-A, offered on page 1163 of the hearing of November 6, 1922, and which is a copy of a letter written by a man named Smith, complaining of the fact that he had to pay this twenty-five cents.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 40, being a copy of a letter dated August 23, 1920, from J. A. Smith, Elmwood, Ill., to "Friend Shute", Chicago, Illinois, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 40 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

511 Mr. Towner: I will next offer as DEFENDANTS' EXHIBIT 41 this bundle which was offered and received

in the hearing before the Commission as Exhibit 13-A, at page 1197 of the hearing of November 6, 1922. I might add by way of explanation that this bundle was attached to the complaint filed in Docket 12614 before the Commission, and purports to contain the names of a multitude of shippers who made shipments to the Stock Yards. I have not read the exhibit; it was designated as Appendix A in that complaint.

Mr. Hillyer: And it was referred to in the body of the complaint and made a part thereof.

Mr. Towner: That, perhaps, is so. The complaint will show and it is in the record. At any rate it was offered in the hearings before the Commission.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit 41, being a bundle of papers containing the names of the shippers who made the shipments to the Stock Yards involved in this case, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 41 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

512 Mr. Towner: I would also like to direct your attention to the fact that at page 1248 of the hearing of November 6, 1922, before the Interstate Commerce Commission, there was offered an exhibit which was there identified as Exhibit 14-A. That exhibit consisted of certain tariffs and tariff settlements filed by the Union Stock Yards and Transit Company with the Interstate Commerce Commission. All of those tariffs, together with some others, are contained in Exhibit 1 attached to the stipulation, which was introduced in evidence in this file as Defendants' Exhibit 1.

Mr. Godman: The same tariffs, Mr. Towner?

Mr. Towner: Yes.

Mr. Godman: They were all offered before the Commission and are attached to the stipulation?

Mr. Towner: All of them were not offered in the hearings before the Commission. The ones we offered before the Commission as 14-A are included in the ones attached to the stipulation, but all of the ones attached to the stipulation were not offered in the hearings before the Commission.

Mr. Towner: I will next offer as DEFENDANTS' EX-

HIBIT 42 a number of documents that were sent to the Interstate Commerce Commission under date of June 2, 1919, and were filed in Docket 9977, pursuant to a request of Commissioner Aitchison, who was conducting the hearings for the Commission, that request appearing at page 1332 of the transcript taken before the Commission on the hearing of May 20, 1919. I have fastened all these documents together, and I will ask that all of them be marked as one exhibit. This Exhibit 42 was filed with the Commission pursuant to a request of Commissioner Aitchison that the parties submit
513 in the record copies of all contracts between the Chicago Junction Railway Company and the line-haul carriers pertaining to the trackage charge made by the Chicago Junction.

The Court: Admit it.

Whereupon said documents marked Defendants' Exhibit 42, being a copy of all contracts between the Chicago Junction Railway Company and the line-haul carriers pertaining to the demurrage charge made by the Chicago Junction, together with a letter of transmittal from the firm of Winston, Strawn & Shaw, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 42 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

514 Mr. Towner: I now offer in evidence as DEFENDANTS' EXHIBIT 43 a statement which was filed with the Commission in Docket 9977 on June 6, 1919, pursuant to authority granted at page 1296 of the transcript of evidence taken before the Commission at the hearing of May 20, 1919. This exhibit is a statement showing the receipts of cars of live stock at the Stock Yards in Chicago between 6:00 P. M. and 6:00 A. M., for the week ending March 8, 1919.

The Court: Admit it.

Whereupon said document marked Defendants' Exhibit No. 43, being a statement showing the receipts of cars of livestock at the Stock Yards in Chicago between 6:00 P. M. and 6:00 A. M. for the week ending March 8, 1919, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit No.

43 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

515 Mr. Towner: I will next offer as DEFENDANTS' EXHIBIT 44 a copy of freight rate authority 2770 issued by the Director General of Railroads and dated November 16, 1918, and in connection with that exhibit I will say that at page 1256 of the hearing of May 20, 1919, before the Commission this document was referred to. The transcript indicates that this docket was offered as an exhibit. The transcript also indicates it was offered as an exhibit and identified as Beyer's Exhibit No. 1. When we secured Beyer's Exhibit No. 1 from the Commission, and it has already been offered in evidence, it was not this docket, but referred to this docket, but in order to clear up any possible misunderstanding we thought we would offer this in evidence if there is no objection.

The Court: Admit it.

Whereupon this document marked Defendants' Exhibit 44 was received in evidence, and is in the words and figures as follows, to wit:

516 November 16, 1918. Defts.'
H File F 25-1686-1.

FREIGHT RATE AUTHORITY No. 2770

Switching charges increased under General Order No. 28.

Mr. D. Campbell, Chairman,
Eastern Freight Traffic Committee,
143 Liberty St., New York City.

Mr. N. B. Wright, Chairman,
Southern Freight Traffic Committee,
Walton Bldg., Atlanta, Ga.

Mr. A. C. Johnson, Chairman,
Western Freight Traffic Committee,
Transportation Bldg., Chicago, Ill.

Gentlemen:

Freight Rate Authority No. 1887 of October 18, 1918, authorized the revision of switching charges for intra-plant, intra-terminal and inter-terminal switching on commodities for which paragraph (a) of Section 2 of Supplement to General Order No. 28 provided increases by specified amounts,

these commodities being named in that Freight Rate Authority.

This will authorize a revision of all other switching charges for intra-plant, intra-terminal and inter-terminal switching on the following basis:

Twenty-five per cent higher than the charges in effect May 25, 1918, subject to a minimum charge of $2.50 per car for intra-plant switching and $5.00 per car for intra-terminal or inter-terminal switching subject to the following Exceptions:

Fractional rule as provided in Section 6 of General Order No. 28 shall be used in applying this authority.

This authority does not apply to switching charges which have been revised under freight rate authorities previously issued, nor to such charges the revision of which has been authorized by previous freight rate authorities, but not yet published.

This authority does not apply to switching charges for services in connection with a line haul, as such charges were not increased by General Order No. 28.

For the purpose of the application of this authority the terms, "intra-plant", "intra-terminal switching" and "inter-terminal switching", are defined as follows:

Intra-plant Switching: A switching movement from one track to another within the same plant or industry.

517 Intra-terminal Switching: A switching movement (other than intra-plant switching) from one track to another of the same road within the switching district.

Inter-terminal Switching: A switching movement from a track of one road to a track of another road when both tracks are within the switching limits of the same station or industrial switching district.

This authority is not to be understood as a permanent or reasonable basis for switching charges, but is issued to bring these charges to the same relative basis as that authorized by Freight Rate Authority No. 1887 for the commodities named therein until such time as an investigation can be made of the proper charges to be assessed at each point for services of this character.

Publish and file with Interstate Commerce Commission on 30 days' notice under Circular No. 1-A of July 1, 1918, and quote Freight Rate Authority as above.

Yours very truly,

(Signed) EDWARD CHAMBERS,
Director, Division of Traffic.

cc—Director Prouty
cc—Mr. Crosland, ICC

Pursuant to due authority, I, as Chief Clerk of the United States Railroad Administration, do hereby certify that the foregoing, consisting of two sheets, is a true copy of "Freight Rate Authority No. 2770, issued by the Director, Division of Traffic, dated November 16, 1918," now a part of the files and records of the Railroad Administration.

Witness my hand and the seal of the United States Railroad Administration this 30th day of December, 1929.

W. B. ROBINSON (Signed)
Chief Clerk, United States Railroad Administration.

(Seal)

518 Mr. Towner: I have one more thing I would like to introduce. Before doing so I would like to say that the exhibits we have introduced here yesterday and today, from Exhibit 5 to Exhibit 44, inclusive, when taken together with the stipulation that was made yesterday and this morning, with respect to certain exhibits, comprises all of the transcript, evidence and exhibits presented to the Interstate Commerce Commission in connection with this case and upon which the order sued on in this case is based.

The Court: That refers to all three numbers of the proceedings before the Commission?

Mr. Towner: All three numbers, I. and S. 1118 and Dockets 9977 and 12614.

I would like to say that where I have referred to the hearings of May 20, 1919, and November 6, 1922, I mean, of course, the hearings beginning on those dates.

I have here, Your Honor, a copy of the rules of practice before the Interstate Commerce Commission, effective during the time involved in the complaints filed in 9977 and 12614, and including also the time involved in the hearing before the Commission, I. and S. Docket 1118. These rules, if Your Honor please, were promulgated by the Commission on March 20, 1916, and were effective from that time up to the close of Federal control. There are certain of those rules I desire to offer in evidence merely by reading them, provided counsel will agree to it, and if they will not we will produce a witness to testify. I thought perhaps we might shorten the procedure a little. Counsel suggests that by agreement we can introduce the whole pamphlet as an exhibit and that is agreeable to us, and under that agreement I will offer the entire booklet as DEFENDANTS' EXHIBIT 45.

519 The Court: Admit it.

Whereupon said document marked Defendants' Exhibit

45, which is a printed pamphlet containing the rules of practice promulgated by the Interstate Commerce Commission on March 20, 1916, was received in evidence and is here incorporated in this Bill of Exceptions by reference and hereby made a part hereof, to the same extent as though fully set out herein. Said Defendants' Exhibit 45 is, by order of the Honorable Charles E. Woodward, Trial Judge, transmitted by the Clerk of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Circuit as an original exhibit in lieu of a copy thereof.

520 Mr. Hillyer: Will you add that these rules are promulgated by the Commission under Section 17 under the Act Regulating Commerce?

Mr. Towner: Yes, this document which has been marked Defendants' Exhibit 45, as I have stated, is a copy of the rules of practice before the Interstate Commerce Commission, effective March 20, 1916, and remained in effect until March 2, 1920, being the rules of practice before the Commission, promulgated by that body in accordance with the provisions of Section 17 of the Act to Regulate Commerce.

These are all the exhibits I have to offer at this time, and I will yield to Mr. McLaughlin, who wishes to offer evidence in support of certain paragraphs of the stipulation.

Mr. McLaughlin: The defendant, Andrew W. Mellon, Director General of Railroads, as Agent, offers in evidence General Order No. 1, issued by the Director General of Railroads, dated December 29, 1917, and it is published beginning on page 145 of the United States Railroad Administration, Director General of Railroad Bulletin, No. 4, revised, and since that is the only part of the volume we desire to offer, I will read the General Order now.

The Court: Any objection?

Mr. Godman: No objection.

The Court: Admit it.

Thereupon counsel read to the court and jury General Order No. 1, as follows:

521 GENERAL ORDER NO. 1.

Washington, D. C., December 29, 1917.

To all concerned:

Pursuant to the order of the President of the United States, through the Secretary of War, the undersigned, as Director General of Railroads, has taken possession and assumed control of certain transportation systems described in the proclamation of the President, of which proclamation and order officers, agents and employees of said transportation systems are to take immediate and careful notice.

All Employees to Continue.

In addition to the provisions therein contained it is, until further order, directed that—

1. All officers, agents and employees of such transportation system may continue in the performance of their present regular duties, reporting to the same officers as heretofore and on the same terms of employment.

2. Any officer, agent, or employee desiring to retire from his employment shall give the usual and seasonable notice to the proper officer to the end that there may be no interruption or impairment of the transportation service required for the successful conduct of the war and the needs of general commerce.

National Needs Paramount.

3. All transportation systems covered by said proclamation and order shall be operated as a national system of transportation, the common and national needs being in all instances held paramount to any actual or supposed cor-
522 porate advantage. All terminals, ports, locomotives, rolling stock, and other transportation facilities are to be fully utilized to carry out this purpose without regard to ownership.

4. The designation of routes by shippers is to be disregarded when speed and efficiency of transportation service may thus be promoted.

5. Traffic agreements between carriers must not be permitted to interfere with expeditious movements.

6. Through routes which have not heretofore been estab-

lished because of short hauling or other causes are to be established and used whenever expedition and efficiency of traffic will thereby be promoted; and if difficulty is experienced in such through routing notice thereof shall, by carriers or shippers or both, be given at once to the director by wire.

7. Existing schedules or rates and outstanding orders of the Interstate Commerce Commission are to be observed, but any such schedules or rates or orders as may hereafter be found to conflict with the purposes of said proclamation or with this order shall be brought immediately by wire to the attention of the director.

W. G. McAdoo,
Director General of Railroads.

523 Mr. McLaughlin: I might suggest it is the last paragraph we are particularly interested in, in making this offer, as showing that the rates in force by the carriers at the time the Government took charge were continued in effect until a change was made.

THOMAS H. GILLIS, a witness called on behalf of the defendants, having been first duly sworn, was examined in chief by Mr. McLaughlin and testified as follows:

I live in Washington, D. C., and am Assistant Secretary of the Interstate Commerce Commission. I have been employed by the Commission about twenty-two years. For ten years I have been in the Secretary's office, but my previous employment was in a bureau of which the Secretary is the head. That bureau is the Section of Dockets. When I first went to the bureau I kept the docket; later I was made Assistant Chief of the section and conducted most of the correspondence, and had charge of the greater number of the clerks in the section. I became Assistant Secretary about four years ago, and am still active in that capacity. Under the law the Secretary is custodian of the records of the Commission. The dockets and records of the Commission informal and formal investigation and suspension proceedings are in my charge under the direction of the Secretary.

Q. And have you brought the records or any files in the I and S Docket 1118, or I. C. C. No. 9977 and I. C. C. No. 12614, with you, and are they in this court room?

A. Yes, sir.

Q. Have you examined those dockets and records on file to which you have referred?

A. Yes, sir.

524 Q. Do your dockets contain notations in reference to the complaints and amendments to complaints that are filed in these cases, and to the service of those complaints and amendments upon the parties in interest?

A. You mean those records (indicating)?

Q. Yes.

A. They contain the actual docket.

Q. The record you brought here contains the actual docket?

A. Yes, sir.

Q. And the dockets themselves contain notations as to the filing and as to the service, do they not?

A. Yes, sir, but I do not have them with me.

Q. You do not have the dockets with you?

A. No, sir.

I examined the record and found no formal amendment on file in the record; that is, formal amendment to the complaint in Docket 9977 in the record.

Mr. McLaughlin: Will you state whether or not the formal complaint in Docket 9977 was at any time served on the Director General of Railroads?

A. The record does not indicate that it had not been served on the Director General.

Q. And does the record indicate service of any amendment to that complaint on the Director General?

A. No, sir.

Mr. McLaughlin: The docket; does that indicate any service of any amendment to the complaint in Docket 9977 on the Director General?

A. No formal service.

525 *Cross-Examination by Mr. Hillyer.*

Q. Mr. Gillis, did you see in your examination of the bound record of the Commission in this case, did you you come across the order of the Interstate Commerce Commission bringing the Director General in as a party to the case?

Mr. McLaughlin: Now that is objected to.

Mr. Hillyer: He was brought in as a party, was he not?

The Court: Overruled. He may answer.

The Witness: There is an order in the record; I don't recall from memory the date, making the Director General

—providing among other things that the Director General was made a party respondent.

Mr. Godman: That is in 9977?

The Witness: That is in 9977.

The Witness: Yes, and the order also applied to I and S proceedings; the order covered both proceedings, 9977 and 1118.

Mr. Hillyer: Now, Mr. Gillis, have you read the transcript of the record in this case?

A. No, sir.

Q. If the transcript of the record contained any rulings made by the Examiner or the Commissioner in charge of the hearing, with respect to the complaint and issues which might be construed by some of us as amendments to the complaint, you, of course, would have no information about that, if it is contained in the transcript of the record?

A. That is correct.

Mr. Hillyer: That is all.

Mr. McLaughlin: That is all. If the court please, I think that is all of the evidence that I have, but we ought to dispose of, at this time, the objection of the plaintiff to that portion of Defendants' Exhibit 1, the objection that was made
526 yesterday and passed over until today for disposition.

Whereupon the jury was excused and arguments were had by counsel out of the presence of the jury.

Whereupon the following proceedings were had within the presence of the jury:

The Court: The plaintiffs' objection to paragraphs 12 to 25 inclusive of the stipulation marked Defendants' Exhibit 1 is overruled.

To which ruling of the court the plaintiffs by their counsel then and there duly excepted.

The Court: The court will advise the jury that the court has overruled the objection of the plaintiffs to the admissibility of Sections 12 to 25, both inclusive, of the stipulation, and those sections will now be read to you by counsel for the Director General.

Mr. McLaughlin: I will read these Sections 12 to 25, both inclusive, which have not been read to the jury.

Whereupon counsel read to the jury paragraphs 12 to 25, which are a part of Defendants' Exhibit 1 and are as follows:

Defts. (12) That prior to the said period of Federal control of Railroads, R. N. Collyer, as the duly authorized and appointed agent of the line-haul carriers, engaged in the transportation

of livestock between the said Union Stock Yards and points east of Chicago, Illinois, published his official Classification No. 44, providing general regulations, form of contract, and terms and conditions for said transportation by said line-
527 haul carriers, which was duly filed with the Interstate Commerce Commission under I. C. C. O. C. No. 44 and became effective February 1, 1917.

(13) That at noon, December 28, 1917, the Director General of Railroads took over the lines of railroads of the said line-haul carriers which engaged in the transportation of live stock between the said Union Stock Yards and points
528 east of Chicago, Illinois, and continued in effect the said Official Classification No. 44.

(14) That during the said period of Federal control of railroads the Director General of Railroads published two supplements to said Official Classification No. 44, which in form and substance carried forward and continued in force during the said period of Federal control of railroads, except as hereinafter indicated, the general regulations, form of contract, and terms and conditions for the transportation of live stock between the said Union Stock Yards and points east of Chicago, Illinois, as contained in said Official Classification which supplements were filed with the Interstate Commerce Commission under I. C. C. Nos. 20 and 29, and became effective January 1, 1918, and September 30, 1918, respectively.

(15) That copies of the pages of said Official Classification No. 44, viz., title page, and pages xxi, lxiii, lxiv, 1, 30, 48, 49, 220, 221, 222, 223 and 224; of title page and pages 3, 4 and 5 of said supplement No. 20 thereto; and of title page and pages 17, 18 and 19 of said Supplement No. 29 thereto, which have been duly certified by George B. McGinty, Secretary of the Interstate Commerce Commission, are attached hereto, made a part hereof, and numbered Exhibit 3.

(16) That prior to the said period of Federal control of railroads, R. C. Fyfe, as the duly authorized and appointed agent of the line-haul carriers, engaged in the transportation of live stock to the said Union Stock Yards from points west of Chicago, Illinois, published his Western Classification No. 54, providing certain regulations, and terms and conditions for the said transportation by said line-haul carriers, which was duly filed with the Interstate Commerce Commission under I. C. C. No. 12 and became effective September 1, 1916.

529 (17) That at noon December 28, 1917, the Director General of Railroads took over the lines of railroads en-

gaged in the transportation of live stock to the said Union Stock Yards from points west of Chicago, Illinois, and continued in effect the said Western Classification No. 54.

(18) That copies of the pages of said Western Classification No. 54, viz., title page and pages i, lix and 249, which have been duly certified by George B. McGinty, Secretary of the Interstate Commerce Commission, are attached hereto, made a part hereof, and numbered Exhibit 4.

(19) That during the said period of Federal control of railroads the Director General of Railroads published Western Classification No. 55, and Supplement No. 1 thereto, which in form and substance carried forward and continued in force during the said period of Federal control of railroads, except as hereinafter indicated, certain regulations and terms and conditions for the transportation of live stock to the said Union Stock Yards from points west of Chicago, Illinois, as contained in Western Classification No. 54, which classification and Supplement No. 1 were duly filed with the Interstate Commerce Commission under I. C. C. No. 13 and Supplement No. 1, and became effective April 1, 1918, and April 20, 1918, respectively.

(20) That copies of the pages of said Western Classification No. 55, viz., title page, and pages i, xiii, lxi, and 282, and of title page and pages 4 and 21 of said Supplement 1 thereto, which have been duly certified by George B. McGinty, Secretary of the Interstate Commerce Commission, are attached hereto, made a part hereof, and numbered Exhibit 5.

530 (21) That during the period of Federal control of railroads the Director General of Railroads published Consolidated Freight Classification No. 1, consolidating and superseding the aforementioned Official Classification No. 44, and Western Classification No. 55, and containing in form and substance certain regulations, form of contract, and terms and conditions for the transportation of live stock between the said Union Stock Yards and points east of Chicago, Illinois, as contained in Official Classification No. 44; and also containing in form and substance certain regulations and terms and conditions for the transportation of live stock to the said Union Stock Yards from points west of Chicago, Illinois, as contained in said Western Classification No. 55, which Freight Classification No. 1 was duly filed with the Interstate Commerce Commission under I. C. C.—O. C. No. 45 and I. C. C. No. 14, and became effective December 30, 1919, and continued in full force and effect during the remainder of said period of Federal control of railroads.

(22) That copies of the pages of said Consolidated Freight Classification No. 1, viz., title page and pages ii, xxxv, lxxxix, 47, 48, 240 and 250, which have been duly certified by George B. McGinty, Secretary of the Interstate Commerce Commission, are attached hereto, made a part hereof, and numbered Exhibit 6.

(23) That prior to the said period of Federal control of railroads, E. B. Boyd, as the duly authorized and appointed agent of the line-haul carriers engaged in the transportation of live stock between the said Union Stock Yards and points within the State of Illinois, published his Illinois Classification No. 10-B, providing certain regulations and terms and conditions for said transportation by said line-haul car-
531 riers, which Illinois Classification was filed with the Interstate Commerce Commission under I. C. C. No. A-658, and became effective May 25, 1916.

(24) That at noon December 28, 1917, the Director General of Railroads took over the lines of railroads of said line-haul carriers which engaged in the transportation of live stock between the said Union Stock Yards and points within the State of Illinois, and continued in effect the said Illinois Classification I. C. C. No. A-658.

(25) That copies of the pages of said Illinois Classification I. C. C. No. A-658, viz., title page and pages iii, iv and 5, which have been duly certified by George B. McGinty, Secretary of the Interstate Commerce Commission, are attached hereto, made a part hereof, and numbered Exhibit 7.

The exhibits referred to in the foregoing paragraphs 15, 18, 20, 22 and 25 are attached to and made a part of Defendants' Exhibit 1 which has been heretofore incorporated herein by reference and is transmitted as an original exhibit.

532 Mr. McLaughlin: The Director General of Railroads rests.

Mr. Towner: And the Stock Yards Company does likewise.

Mr. Godman: If the court please, subject to the reservation which was made earlier in this case, in respect to testimony pertaining to attorney's fees, which Mr. McLaughlin and Mr. Towner have agreed they will stipulate in writing may be taken, if necessity for it should arise before Your Honor, and without the intervention of the jury, after a not so very thorough examination of law, but all the law seems to be persuasive that there is the course to follow in case of the presentation of these attorney's fees and with that reser-

vation, and also with the understanding I have arrived at with Mr. McLaughlin, representing the Director General, and Mr. Towner, representing the Stock Yards Company, that we may take the figures shown in Exhibit 4 and compile the amount there shown to have been ordered as reparations, I will submit it to these gentlemen, and that the statement, if verified by them and agreed to may go into evidence as an exhibit, or the result stated with the same effec as though it had been sworn to by a witness. Is that correct?

Mr. Towner: Yes.

Mr. McLaughlin: So that there will be no misunderstanding, these amounts in some instances are considerably in excess of the amount the witness testified had been paid of the charges. We were precluded from going back to the witnesses' testimony. We are not admitting these amounts are correct, but they are the amounts shown in Exhibit 4, and allowed by the Commission.

533 Mr. Godman: With that understanding we will rest.

Which was all of the evidence offered and received on the part of plaintiffs and defendants upon the trial of this cause.

And thereafter the following proceedings were had before the court out of the presence of the jury:

Mr. Towner: If Your Honor please, the case having been closed, with the reservations made by Mr. Godman, on behalf of the Stock Yards Company, the defendant, I wish to present a motion for a directed verdict.

In connection with that motion I would like to say this, Your Honor: Of course, the practice in this court is supposed to conform to the practice in the State courts, so far as it may. Due to the nature of this case, however, I have departed somewhat from that form in that I have specified in the motion the grounds upon which the defendant Stock Yards Company relies in presenting the motion. In addition I have reserved, in the final paragraph, the right, in the event that the motion be denied, to have the case submitted to the jury upon the special charges requested by my client, and any other charges given by the court on such questions of fact as might properly be submitted to the jury.

Mr. McLaughlin: If the court please, on behalf of Andrew W. Mellon, Director General of Railroads, as Agent, the defendant in this suit, I wish to present a motion requesting

534 the court to direct the jury to return a verdict for the Director General as Agent, and in doing so I have followed

the method suggested by Mr. Towner, which I hope will be regarded as a proper and sufficient method of presenting such a motion, notwithstanding it is somewhat different from the practice in the State court.

This suit is a rather unusual one, in a sense it is a special proceeding, but it is also a kind of a law action, and if there is any question about the propriety of this form of motion, I would like to have Your Honor, or counsel, suggest; and if there is no suggestion to the contrary, I will assume it is satisfactory, even though it may not be in strict compliance with the usual practice.

The Court: You can enter your motion and if there is any objection to it I will hear the objection as to the form.

Mr. Godman: I have not had an opportunity of examining these motions; I don't know that I will have any objection. I will say this: If there is any technical imperfection in it by which counsel feels he might lose, I will consent that he can remedy that by putting it in proper form later.

Mr. McLaughlin: I might suggest that the same reservation of the right to go to the jury in the event the motion is overruled is contained in the motion.

Mr. Towner: There is one thing more I would like to say in connection with these motions, and that is this: To a rather considerable extent the motion of the Stock Yards Company and the motion of the Director General rests upon the same grounds. It is not our intention, and I think I can speak for Mr. McLaughlin in this respect, to have both of us argue the same points. There will be some deviation on that, and with reference to this point—

The Court: Up to a certain point, as I understand your pleadings, you go together.

535 Mr. Towner: Exactly. And to that extent there will only be one argument presented on both motions, because there is no point in having Mr. McLaughlin and Mr. Andrews make an extended argument on a point and have me reiterate it where we are together on the thing and where it affects us both equally.

Thereupon the motions of the said defendants for a directed verdict were presented and filed, and are in the words and figures following, to-wit:

536 • • (Caption) • •

MOTION OF DEFENDANT, UNION STOCK YARD & TRANSIT COMPANY, FOR A DIRECTED VERDICT.

All parties having rested and the evidence being closed, defendant Union Stock Yard & Transit Company of Chicago now moves the Court to direct the jury to return a verdict in its favor and against all of the plaintiffs, on the following grounds:

1. The complaint in Docket 9977 before the Interstate Commerce Commission did not pray for the payment of reparation by this defendant to any of the plaintiffs herein, and the evidence is insufficient to sustain any award of reparation against said defendant and to said plaintiffs in Docket 12614 before the said Commission.

2. Said defendant in any event is not liable to plaintiffs upon any shipments which moved prior to February 25, 1919, and the record is insufficient to sustain any award against said defendant and in favor of plaintiffs on shipments moving subsequent to said date.

3. The award and order of the Interstate Commerce Commission sued on in this case is void because the Inter-
537 state Commerce Commission in making such award and order went outside the record made before it and considered substantial evidence not in said record.

4. The evidence is insufficient to support or sustain the award and order of the Interstate Commerce Commission sued on in this case.

5. The evidence in this case shows that said defendant in loading and unloading live stock at the Union Stock Yards, Chicago, Illinois, during all of the time involved in this case was not performing a common carrier service, and that with respect to such service the Interstate Commerce Commission had no jurisdiction.

6. The evidence in this case shows that all of the charges referred to in the award and order of the Interstate Commerce Commission sued on and involved in this case were not paid to this defendant, but to the Director General of Railroads, and that the only charges received by said defendant during the period involved in this case for loading and unloading live stock were charges authorized by this defendant's tariffs then on file with the Interstate Commerce

Commission, and which had been approved by said Commission.

7. The evidence in this case is insufficient to show the amount, if any, paid on account of the loading and unloading charges in controversy and received by this defendant.

8. The evidence in this case is insufficient to show the amount of the liability, if any, existing in behalf of any plaintiff in this suit and against this defendant.

9. The evidence in this case shows that the evidence offered and received in the various hearings before the Interstate Commerce Commission in the proceedings in which the order and award sued on was made, was insufficient to justify or support such order.

538 10. The order and award of the Interstate Commerce Commission sued on herein operates to confiscate the property of this defendant, in violation of its constitutional rights.

11. The order and award of the Interstate Commerce Commission sued on herein is contradictory to and in violation of the previous finding of the Commission that the duty to load and unload live stock at the Union Stock Yards, Chicago, rested upon the carriers hauling such stock to and from said market, and has the effect of imposing such duty upon this defendant.

12. The evidence in this case shows affirmatively that the plaintiffs in this suit do not have any interest or right sufficient to entitled them or any of them to maintain this suit or any suit to recover the charges sued for herein.

13. The evidence is insufficient to show a liability on the part of this defendant to any plaintiff in this suit in any amount.

14. The evidence is insufficient to show that plaintiffs or any of them have been damaged in any amount by the collection of the charges herein sued for.

15. The evidence shows that the plaintiffs and each of them do not have any right or title to any claim that may have arisen on account of the collection of the charges in controversy, and are without any right or authority to maintain this suit, and were without any right or authority to make complaint in their own names before the Interstate Commerce Commission on account of the collection of such charges, and the awarding of reparation to plaintiffs by said Commission was erroneous and contrary to law.

16. The evidence is insufficient to show or support the

finding of the Interstate Commerce Commission that the docks and chutes of this defendant are or were its terminals used in the transportation of live stock.

539 17. The Interstate Commerce Commission did not acquire or have jurisdiction to enter the order sued on against this defendant, and said order furnishes no basis for a recovery against this deefndant in this suit.

18. Under all of the evidence introduced in this cause no verdict against this defendant, if returned by the jury, could be permitted to stand, but must be set aside by the court.

In presenting this motion this defendant reserves the right, in the event this motion be denied, to have this case submitted to the jury upon special charges requested by it, and upon such other legal and proper charges as the Court may give.

WINSTON, STRAWN & SHAW,
Attorneys for Defendant Union Stock Yard & Transit Company of Chicago.

540 * * (Caption) * *

MOTION OF ANDREW W. MELLON, DIRECTOR GENERAL OF RAILROADS AS AGENT, FOR A DIRECTED VERDICT.

All parties having rested and the evidence being closed, defendant, Andrew W. Mellon, Director General of Railroads as Agent, etc., now moves the Court to direct the jury to return a verdict in his favor and against all of the plaintiffs, and urges as grounds therefor the following:

1. The evidence is insufficient to support or sustain the order of the Interstate Commerce Commission sued on in this case.

2. The evidence in this case shows that the consent of Congress for the bringing and filing of complaints before the Interstate Commerce Commission and against the agent appointed by the President, pursuant to Section 206-A, Transportation Act 1920, was not complied with, and that the Interstate Commerce Commission acquired and had no jurisdiction to make the order and award sued on as against this defendant.

3. The evidence in this case shows that the Union Stock-

yards & Transit Company was, during all of the time complained of in this suit, a common carrier, and that it received the livestock, for the unloading of which the charges in controversy were assessed and collected, from the railroads being operated by the Director General of Railroads, un-
541 der Federal Control, as a connecting carrier; that it unloaded such livestock as such connecting carrier and delivered same after unloading to the consignees entitled to receive the same; that the charge collected for such unloading was provided for in its tariffs on file with the Interstate Commerce Commission and the said Union Stockyards & Transit Company collected said charges and received the benefits thereof.

4. The evidence before the Interstate Commerce Commission and in this case was and is insufficient to support the finding of the Commission that the collection of separate charges from the shippers for unloading and loading live stock in addition to the line haul rates on live stock, was an unlawful and unreasonable practice, but on the contrary such evidence shows the collection of such separate charges was both reasonable and lawful and the duty of the Union Stockyards & Transit Company.

5. The loading and unloading of live stock in carload lots was a part of the transportation of said live stock from point of origin to destination and was a service for which the shipper or consignee was obliged to compensate the carrier performing the same. Such service was performed by the Union Stockyards & Transit Company and the tariffs of the line haul carriers delivering the said live stock to the Union Stockyards & Transit Company provided for absorbing or paying 25c for unloading and 50c for loading each carload of live stock at the Union Stockyards, Chicago. To the extent the charges of the said Union Stockyards & Transit Company for performing such service were not within the absorption provisions of the line haul carriers, same were properly collectible from the shipper or consignee and being in a lawfully published tariff the Union Stockyards & Transit Company was bound to make such collection.

542 6. The evidence in this case is insufficient to show that the Director General of Railroads collected or received any of the money paid to the Union Stockyards & Transit Company on account of the loading and unloading charge in dispute.

7. The evidence in this case is insufficient to show the

amount, if anything, paid on account of the loading and unloading charges in controversy, received by the Director General.

8. The evidence in this case is insufficient to show the amount of liability if any existing in behalf of any plaintiff in this suit and against defendant, Andrew W. Mellon, Director General of Railroads as agent.

9. The evidence in this case shows that the evidence offered, introduced and received in the various hearings before the Interstate Commerce Commission in the proceedings in which the order sued on was made was insufficient to justify or support such order.

10. The evidence offered, introduced and received before the Interstate Commerce Commission, in the proceedings in which the order sued on was entered, was insufficient to support the Commission's finding and conclusion that the loading and unloading of livestock at the Union Stockyards, Chicago, was a duty that should be performed by the carriers without making a separate charge therefor.

11. The evidence in this case shows affirmatively and conclusively that plaintiffs received the livestock, on account of which the charges involved in this suit were assessed and collected, as commissionmen or agents of the various persons, firms and corporations who shipped the same, as consignees, for purposes of sale, in consideration of the payment of a commission and the said plaintiffs sold said livestock as such commissionmen and agents of the shippers and paid the charges in controversy, from the shippers' own funds,
543 before remitting the net proceeds of the sale thereof and shows that the said plaintiffs do not have such interest or right as will entitle them or any of them to maintain suit to recover such charges in any event.

12. The evidence is insufficient to show such interest in plaintiffs or any of them as will permit of recovery herein on the part of any plaintiff as against this defendant.

13. Under all the evidence in this case, the fact of the agent of the linehaul carriers inserting the unloading charge in the waybill stub, which constituted the bill presented by the Union Stockyards & Transit Company to the consignees, covering freight and terminal charges, will not justify a finding that the Director General participated in the collection of such charges or that he received the benefit of the collection thereof, nor will such fact justify a verdict against this defendant.

14. The charge complained of in this suit, while the tariff of the Union Stockyards & Transit Company providing therefor, was in effect and to the extent that the tariffs of the linehaul carriers made no provisions for its absorption, was a charge the Union Stockyards & Transit Company was bound to collect from the consignor or consignee of the livestock involved and the fact that the agent of the linehaul carriers, in making up the bill to be presented by the Union Stockyards & Transit Company for freight and terminal charges, inserted or included such charge as a separate item therein will not justify or sustain a verdict against this defendant.

15. The evidence is insufficient to show a liability on the part of this defendant in favor of any plaintiff in this suit in any amount.

16. The evidence is insufficient to show that plaintiffs or any of them have been damaged in any amount by the collection of the charges in controversy.

17. The evidence affirmatively shows that plaintiffs and each of them are without any right or title to any claim that may have arisen on account of the collection of the 544 charges in controversy and are without any right or authority to maintain this suit and were without any right or authority to make complaint in their own names before the Interstate Commerce Commission on account of the collection of such charges, and the awarding of reparation to plaintiffs by the Interstate Commerce Commission was erroneous and contrary to law.

18. The evidence is insufficient to show or support the finding of the Interstate Commerce Commission that the docks and chutes of the Union Stockyards & Transit Company are or were the terminals of the railroad carriers but, on the contrary, affirmatively shows that such docks and chutes were the property of the Union Stockyards & Transit Company, used, maintained and operated by it in the performance of its duties and services as a common carrier of livestock.

19. The evidence in this case affirmatively shows that the docks, chutes and loading pens and stockyards used, maintained and operated by the Union Stockyards & Transit Company, constituted the property devoted to public use and employed in conducting the business of the Union Stockyards & Transit Company, as a common carrier and as a connecting carrier of the railroad carriers transporting livestock

thereto and therefrom, and same were not the terminals of such railroad carriers and were no part of the facilities of such railroad carriers, and the services performed in the operation and use thereof was not a service included in the transportation furnished by such railroad carriers, under and pursuant to their tariffs on file with the Interstate Commerce Commission.

20. The evidence shows that compensation for the service of loading and unloading livestock transported by the railroad carriers involved in this suit, to the Union Stockyards, Chicago, was included in the linehaul rate and terminal charge in the amount of 50c for loading and 25c for unloading each carload of such livestock, and the additional charge of 25c contained in the tariff of the Union Stockyards &
545 Transit Company effective May 21, 1917, was not included therein.

21. The place of delivery of the livestock in controversy was off of the lines of the railroad carriers operated by the Director General of Railroads under Federal Control and involved in this suit, and the service of loading and unloading such livestock was performed by a common carrier on whose property delivery was required to be made. There is no evidence in this case justifying a finding that the said railroad carriers should assume and pay any portion of such common carrier's charges for the services it performed, in excess of the amounts provided for in their tariffs on file with the Interstate Commerce Commission.

22. The tariffs and livestock contracts of the railroad carriers, operated by the Director General of Railroads under Federal Control, and involved in this suit, provided that the rates were made in respect to the duty of the shipper or consignee to load and unload the same. The shippers and consignees were relieved of such burden at Union Stockyards, Chicago, in the sum of 50c for loading and 25c for unloading each carload of livestock, by reason of the absorption provisions of the railroad carriers tariffs to that effect, but the remainder of such burden rested and remained on the shipper and consignee

23. The Interstate Commerce Commission did not acquire or have jurisdiction to enter the order sued on against this defendant, and the pretended order furnishes no basis for a recovery against this defendant in this suit.

24. Under all of the evidence introduced in this cause, no verdict against this defendant, if returned by the jury, could

be permitted to stand but must be set aside by the Court.
546 In presenting this motion, defendant reserves the right, in the event this motion be denied, to have this case submitted to the jury upon the special charges requested by him, and upon such other legal and proper charges as the court may give.

EDGAR R. HART
SIDNEY F. ANDREWS
A. A. MCLAUGHLIN
Attorneys for Defendant, Andrew W. Mellon, Director General of Railroads as Agent.

547 And afterwards, to-wit, on January 28, 1930, the following proceedings were had before the court and jury:

The Court: Gentlemen, the court has had under advisement for sometime the motion made at the conclusion of all the evidence by the Union Stock Yards and Transit Company and the Director General, as Agent, respectively, for a directed verdict. What the court has to say upon that motion has been reduced to writing and I will read it.

Thereupon the court read its opinion on the motion of the defendants for a directed verdict, and the same was filed in this cause, and appears in the record proper and reference to which is hereby made.

Thereupon the ruling of the court was that the mtoions to direct a verdict made by the defendant Andrew W. Mellon, Director General, as Agent, etc., and a similar motion made by the Union Stock Yards and Transit Company, defendants, be, and each of them were, allowed.

Mr. Godman: May I have an exception to the ruling?

The Court: Yes.

Mr. Godman: On both motions?

The Court: Yes, exception to the ruling of the court.

To which action of the court in allowing said motions the plaintiffs, and each of them by their counsel, then and there duly excepted.

Mr. Godman: I presume when Your Honor directs a verdict judgment will be entered, and I desire to pray an appeal at that time.

The Court: Yes, that will be allowed. Is there any particular form you want these directions to take?

548 Mr. Towner: We have spoken some about that, and I was inclined to think, my own view was, subject to cor-

rection, that just a verdict by the jury, finding the issues, or a direction to the jury to enter a verdict finding the issues in favor of the defendant, would be sufficient.

Mr. McLaughlin: A verdict finding the issues against all the plaintiffs in favor of both defendants I think would be sufficient.

The Court: I will ask you gentlemen to do this: I will take a recess for a few minutes and you can prepare the form you wish.

After recess the following proceedings were had:

The Court: Gentlemen of the jury, the court instructs the jury to find the issues for the defendants and to return into court the verdict which will be submitted to you. Each juror will sign the verdict as it is delivered to him. The verdict is: At the direction of the court we find the issues against the plaintiffs and in favor of the defendants.

Mr. Godman: May we have an exception, Your Honor, to the direction of the verdict?

The Court: An exception to the ruling, an exception to the instruction and an exception to the verdict.

To which action of the court in so instructing the jury the plaintiff, and each of them, by their counsel then and there duly excepted.

And thereupon the following verdict was returned by the jury and read by the Clerk:

At the direction of the court, we the jury find the issues against the plaintiffs and in favor of the defendants.

549 To which verdict of the jury the plaintiffs, and each of them, by their counsel, then and there duly excepted.

Mr. Godman: I will make a formal motion for a new trial.

The Court: Motion for a new trial entered and the motion is overruled.

Mr. Godman: And exception?

The Court: Yes.

To which ruling of the court the plaintiffs, and each of them, by their counsel, then and there duly excepted.

Mr. Godman Motion in arrest of judgment.

The Court: Motion in arrest of judgment entered and overruled.

Mr. Godman: And an exception on the part of each and all the plaintiffs?

The Court: Yes.

To which ruling of the court the plaintiffs, and each of them, by their counsel, then and there duly excepted.

The Court: Judgment on the verdict; judgment in favor of the defendants against the plaintiffs for costs.

Mr. Godman: And from the judgment we will pray an appeal or writ of error, whichever is the proper practice. I think either will be proper.

The Court: Prayer of appeal allowed.

Mr. Godman: Ninety days for Bill of Exceptions?

The Court: As long as you want.

Mr. Godman: Ninety days.

The Court: Ninety days for a Bill of Exceptions.

Mr. Godman: I presume all we need will be a cost bond.

550 The Court: Cost bond is enough.

Mr. Godman: About $250.00 would be sufficient, I think?

The Court: Make the bond $500.00.

Mr. Towner: Judgment on the verdict, Your Honor.

The Court: Judgment on the verdict.

And afterwards, to-wit; on January 31, 1930, being one of the regular days of the December, A. D. 1929 Term of said court, came the plaintiffs, by their counsel, and presented and filed their motion to vacate the orders of said court of January 28, 1930, and presented and filed affidavits in support thereof, said motion and affidavits being in the words and figures as follows, to-wit:

551 * * (Caption) * *

Now come the plaintiffs in the above-entitled case, by their attorneys, Sims Godman & Stransky, and move the court to vacate and set aside the following orders and judgment entered and appearing of record in this case on Tuesday, January 28, 1930:

Order denying and overruling plaintiffs' motion for a new trial;

Order overruling and denying plaintiffs' motion in arrest of judgment;

Judgment on the verdict in favor of defendants and against plaintiffs and against plaintiffs for costs;

Orders allowing appeal, fixing time for bill of exceptions and amount of cost bond.

Plaintiffs by their said attorneys further respectfully request the court to enter this motion and set the same down for hearing and argument on some future date convenient to the court.

In support of said motion there is presented and filed herewith the affidavits of Elwood G. Godman, Esq., and Clair R. Hillyer, Esq.

SIMS GODMAN & STRANSKY
Attorneys for plaintiffs.

552 • • (Caption) • •

State om Illinois }
County of Cook. } ss.

ELWOOD G. GODMAN, being duly sworn, on oath, deposes and says:

I am a practicing lawyer in Chicago, Illinois and a member of the firm of Sims Godman & Stransky, attorneys at law, and one of the attorneys for the plaintiffs in the above-entitled case and in association with Clair R. Hillyer, Esq., conducted the trial of the above-entitled case before the District Court of the United States, for the Eastern Division of the Northern District of Illinois, His Honor, Judge Woodward, presiding, and in which case on January 28, 1930, at the direction of the court, the jury returned a verdict in favor of the defendants and against the plaintiffs in said case. That immediately upon the return of the verdict by the jury as aforesaid, a motion for a new trial was made and without argument thereon overruled and a motion in arrest of judgment then made and without argument thereon overruled and exceptions duly taken and allowed to the action of the court in so overruling said motions, and judgment was rendered by the court upon the verdict and for costs against the plaintiffs. A lengthy writ-
553 ten opinion was rendered by the court immediately prior to directing the jury to return a verdict as aforesaid in favor of the defendants and at the time when the motion for a new trial was made there was not sufficient time in which to digest and analyze the lengthy opinion thus rendered to

enable counsel to properly present and argue the grounds existing in support of said motion for a new trial. The case involves very important principles of law and the decision of the court denies to the plaintiffs the right which they assert to recover from the defendants a large amount of money, towit, in excess of Two Hundred Thousand Dollars ($200,000), which amount had been awarded to them by the Interstate Commerce Commission as reparations for excessive freight charges illegally collected by the defendants.

Since the decision of the court a careful analysis and study of the written opinion of the court leads counsel to believe that the motion for a new trial has substantial grounds proper to be presented in argument to the court in support thereof, and inasmuch as the decision was rendered on January 28, 1930 and the term of court is about to expire, affiant believes that the ends of justice will be advanced and served if the motion presented herewith to vacate the judgment entered on January 28, 1930 as above stated and to vacate the orders overruling plaintiffs' motion in arrest of judgment and plaintiffs' motion for a new trial be allowed, so that the court may be further advised in respect to the grounds which may properly be urged in support of said motion for a new trial.

Affiant does not mean to intimate by the statement herein that the court arbitrarily denied counsel the right to be heard in support of the motion for a new trial, but to merely state that there had not been sufficient time in which to analyze and digest the court's opinion to enable counsel to advise the court of the legal reasons and arguments
554 which could be properly called to the court's attention in support of said motion for a new trial.

Further affiant sayeth not.

ELWOOD G. GODMAN.

Subscribed and sworn to before me, a Notary Public in and for the County and State aforesaid, this 31st day of January, A. D. 1930.

DONALD B. HATMAKER,
(Seal) *Notary Public.*

My commission expires Feb. 27, 1933.

State of Illinois } ss.
County of Cook. }

CLAIR R. HILLYER, being first duly sworn, deposes and says that he has read the foregoing affidavit of Elwood G. Godman, Esq., and was associated with Mr. Godman in the trial of the above-entitled case and knows the facts and joins in said affidavit of Mr. Godman and adopts the same as his own.

Further affiant sayeth not.

CLAIR R. HILLYER.

Subscribed and sworn to before me, a Notary Public in and for the County and State aforesaid, this 31st day of January, A. D. 1930.

DONALD B. HATMAKER
Notary Public.

(Seal)

My commission expires Feb. 27, 1933.

555 And thereupon on the motion of the plaintiffs the court entered their said motion to vacate the orders of January 28, 1930, and set the same for hearing on March 3, 1930. Said order appears in the record proper and reference thereto is hereby made.

And afterwards, to-wit, on February 27, 1930, came the plaintiffs, by their counsel, and moved the court to reset their motion to vacate the orders of the court of January 28, 1930, from March 3, 1930, to March 28, 1930.

And thereupon the said court granted said motion to re-set the motion of the plaintiffs to vacate the orders of January 28, 1930, and re-set the same from March 3, 1930, to March 28, 1930. Said order appears in the record proper and reference thereto is hereby made.

And afterwards, to-wit, on March 21, 1930, came the plaintiffs, by their counsel, and moved the court to re-set the motion of the plaintiffs to vacate the orders of the court of January 28, 1930, from March 28, 1930, to April 11, 1930.

And thereupon the said court granted said motion to re-set motion of the plaintiffs to vacate the orders of January

28, 1930, and re-set the same from March 28, 1930, to April 11, 1930. Said order appears in the record proper and reference thereto is hereby made.

And afterwards, to-wit, on April 7, 1930, on motion of the court the motion of the plaintiffs to vacate the orders of January 28, 1930, was continued to April 18, 1930. Said order appears in the record proper and reference thereto is hereby made.

And afterwards, to-wit, on April 11, 1930, came the plaintiffs, by their counsel, and presented and filed with the court their certain reasons in support of their motion to vacate and set aside the orders of the court entered in this cause on January 28, 1930, and also their certain motion to amend their original petition filed in this cause, and also their amendment to said petition; all of which are in the words and figures as follows, to-wit: Filed Apr. 1930.

556 • • (Caption) • •

REASONS ASSIGNED IN SUPPORT OF MOTION TO VACATE AND SET ASIDE ORDERS ENTERED IN THE ABOVE ENTITLED CAUSE ON JANUARY 28, 1930.

Now come the plaintiffs in the above entitled cause, by their attorneys, Sims, Godman & Stransky, and in support of and supplementary to their motion heretofore filed to set aside the following orders and judgment entered and appearing of record in this case on Tuesday, January 28, 1930,

1. Order denying and overruling plaintiffs' motion for new trial;
2. Motion overruling and denying plaintiffs' motion in arrest of judgment;
3. Judgment on the verdict in favor of defendants and against the plaintiffs, and against the plaintiffs for costs;
4. Orders allowing appeal, fixing time for bill of exceptions and amount of cost bond;

represent and show unto the court that on Tuesday, January 28, 1930, His Honor, Judge Woodward, presiding, announced his decision relative to a motion made at the close

of all of the testimony in said cause to direct the jury
557 sworn and impaneled in said cause to return a verdict in favor of the defendants and against the plaintiffs, and thereupon read a lengthy written opinion setting forth particularly the reasons for his decision granting said motion; that immediately after reading his said written opinion His Honor, Judge Woodward, instructed or directed the jury impaneled and sworn to try the issues in the said case to return a verdict in favor of the defendants and against the plaintiffs in said case; that said jury thereupon returned into open court, pursuant to said instruction and direction of the court, its verdict in favor of the defendants and against the plaintiffs in the case; that thereupon the plaintiffs verbally made a motion for a new trial, which motion was thereupon without argument or discussion overruled; that thereupon the plaintiffs verbally made a motion in arrest of judgment, which motion was also without argument or discussion overruled; that thereupon the court directed that judgment be entered in favor of the defendants and against the plaintiffs and against the plaintiffs for costs, and thereupon entered orders allowing an appeal to the plaintiffs, fixing the time for the filing of bill of exceptions and the amout of cost bond.

Plaintiffs, however, disclaim any intimation or insinuation that His Honor, Judge Woodward, arbitrarily denied counsel the right to be heard in support of said motions, because such is not the fact. Plaintiffs, however, represent to the court that the attorneys for the plaintiffs did not have sufficient time, prior to making said motions, to digest and analyze the lengthy opinion of His Honor, Judge Woodward, so as to then present to the court such arguments and mo-
tions as might be necessary and appropriate to meet or
558 overcome the reasons assigned by the court in its opinion for holding against plaintiffs; that after counsel had studied and analyzed the opinion of His Honor, Judge Woodward, it became apparent to counsel that the holding of the court directing a verdict in favor of the defendants and against the plaintiffs was based solely on the ground that plaintiffs had filed said petition in the above entitled cause in their individual capacities and that the proof offered in the case showed that the persons who were injured by the charging of the alleged excessive, unreasonable and unlawful loading and unloading charges set forth in said petition were the shippers of live stock who ultimately bore said charges

and not the plaintiffs named in said petition who represented said shippers in the various shipments of live stock mentioned and set forth in said petition; that the attorneys for said plaintiffs, after studying and analyzing the opinion of His Honor, Judge Woodward, and after a careful investigation of the facts in this case and a study of the law with reference to their right to amend the petition herein, came to the conclusion that by a proper amendment of the petition filed in the above entitled cause changing the capacity in which plaintiffs bring this suit the cause of action set forth in the petition filed herein may be properly maintained, in accordance with the opinion of the court; that thereafter at the same term of court in which the above-mentioned orders of said court were entered, plaintiffs filed their said motion to vacate and set aside said orders entered as aforesaid on Tuesday, January 28, 1930.

Plaintiffs further represent that they have duly filed in this cause their verified motion to amend the petition filed in this cause, particularly setting forth the facts and
559 circumstances with reference to the relationship existing between themselves and upwards of one hundred seventy-four thousand (174,000) shippers whom said plaintiffs represented in the various shipments of live stock in relation to which the excessive, unlawful and unreasonable charges set forth in the petition in this case arose, and showing particularly the capacity in which said plaintiffs appeared before said Interstate Commerce Commission and procured from said Interstate Commerce Commission the order of reparation in the sum of One Hundred Forty Thousand and One Dollars and Twenty-five Cents ($140,001.25), as set forth in the petition herein; that a copy of said verified motion to amend the petition herein is hereto attached and made a part of this motion.

Plaintiffs further represent that this motion to set aside and vacate the said orders entered as aforesaid by this Honorable Court on the 28th day of January, 1930, is made in good faith in order that said verified motion to amend said petition changing the capacity in which said plaintiffs bring this suit may be considered and passed upon by this Honorable Court.

Plaintiffs in seeking to have said orders so entered as aforesaid on Tuesday, January 28, 1930, vacated and set aside in order that they may be allowed to file and have considered and passed upon their said motion to amend their said

petition, respectfully reserve the right, in the event said motion to set aside said orders of January 28, 1930, is denied, to argue before this court and to contend in any court of review that the action of His Honor, Judge Woodward, in instructing the jury to return a verdict in favor of the
560 defendants and against the plaintiffs was and is erroneous.

SIMS GODMAN & STRANSKY
Attorneys for Plaintiffs.

EDWIN W. SIMS
ELWOOD G. GODMAN
FRANKLIN J. STRANSKY
CLAIR R. HILLYER
Of Counsel.

561 IN THE DISTRICT COURT OF THE UNITED STATES.

For the Eastern Division of the

Northern District of Illinois.

George J. Adams and A. W. Kitchen, copartners trading as Adams & Kitchen, *et al.*,
Plaintiffs,
—*vs*—
Andrew W. Mellon, Director General of Railroads, as Agent, *et al.*,
Defendants.
No. 37517.

MOTION TO AMEND PETITION.

Now come the plaintiffs in the above-entitled cause, by Edwin W. Sims, Elwood G. Godman, Frankin J. Stransky and Clair R. Hillyer, their attorneys, and respectfully petition the court for leave to amend their petition filed in the above-entitled cause on the 8th day of December, A. D. 1928, in accordance with the draft of said proposed amendment hereto attached and made a part of this motion.

Your petitioners hereby represent to the court as grounds for granting leave to amend said petition filed in the above-entitled cause, as aforesaid, on the 8th day of December, A. D. 1928, the following facts, viz:

That prior to May 21, 1917, there was in effect a tariff published and filed with the Interstate Commerce Commission by the Union Stock Yard and Transit Company, one of the defendants in the above-entitled cause, which pro-
562 provided that charges of twenty-five cents (25c) for unloading each car of live stock and fifty cents (50c) for loading each car of live stock would be assessed by said defendant, the Union Stock Yard and Transit Company, on all cars of live stock loaded or unloaded by it at the Union Stock Yards in Chicago, Illinois; that there was also in effect another tariff published and filed with the Interstate Commerce Commission, to which the following named railroads were parties, viz: The Atchison, Topeka & Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; the Baltimore and Ohio Chicago Terminal Railroad Company; The Chesapeake and Ohio Railway Company of Indiana; The Chicago and Alton Railroad Company, and William W. Wheelock and William G. Bierd, Receivers; Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago Junction Railway Company; Chicago, Milwaukee and St. Paul Railway Company, and H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers; The Chicago, Rock Island and Pacific Railway Company; Chicago Terre Haute & Southeastern Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Grand Trunk Western Railway Company; Illinois Central Railroad Company; Indiana Harbor Belt Railroad Company; The Michigan Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; New York Central Railroad Company; New York, Chicago & St. Louis Railroad Company; The Pennsylvania Railroad Company; Pere Marquette Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and Harry A. Dunn, Receivers; and Wabash Railway Company, all of which railroads and
563 systems of transportation were operated and controlled by the predecessors in office of said Andrew W. Mellon during the period of federal control of railroads, to-wit: December 28, 1917, to March 1, 1920; that all of said railroad companies and corporations last named have and during said

period of federal control had systems of transportation and roads running through the Eastern Division of the Northern District of Illinois, with the exception of The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and Harry A. Dunn, Receivers, which railroad company is now a part of the system of the New York, Chicago & St. Louis Railroad Company, and which system has a road running through the Eastern Division of the Northern District of Illinois; that said last-mentioned tariff, to which said railroads were parties, provided that the sum of twenty-five cents (25c) for unloading each car of live stock and fifty cents (50c) for loading each car of live stock would be absorbed and paid by said railroad companies, respectively, to said Union Stock Yard and Transit Company on all cars of live stock loaded or unloaded by that company at said Union Stock Yards and shipped into said Union Stock Yards by said railroads; that said last-mentioned tariff was and is known as Agent L. A. Lowry's Tariff 20-J, I. C. C. No. 37, and supplements thereto.

That effective May 21, 1917, the defendant the Union Stock Yard and Transit Company filed with said Interstate Commerce Commission its tariff I. C. C. No. 2, whereby it increased said charges from twenty-five cents (25c) per car for unloading to fifty cents (50c) per car for unloading, and from fifty cents (50c) per car for loading to seventy-five cents (75c) per car for loading; that no tariff was filed with said Interstate Commerce Commission by said railroads absorbing said increase in said unloading and loading charges, and
564 therefore all shippers and receivers of live stock were, after May 21, 1917, compelled to pay and did pay to said defendant the Union Stock Yard and Transit Company and to said railroads said increase in the charge, viz.:—twenty-five cents (25c) per car for unloading and twenty-five cents (25c) per car for loading, in accordance with said increase created by said tariff I. C. C. No. 2 filed as aforesaid with said Interstate Commerce Commission by said defendant Union Stock Yard and Transit Company; that effective with the taking over of said railroads under federal control, December 26, 1917, all shippers and receivers of live stock to and at said Union Stock Yards were compelled to and did pay to the respective Directors General of Railroads appointed by the President of the United States in accordance with the law the said increase of twenty-five cents (25c) per car for unloading and the said increase of twenty-five cents (25c) per car for loading; that during the said period from December 28, 1917,

to March 1, 1920, the stock yards of the said defendant the Union Stock Yard and Transit Company were the terminals of the predecessors in office of the said defendant Andrew W. Mellon in each of the shipments of live stock hereinafter referred to and on which the sum of fifty cents (50c) per car was exacted for unloading and the sum of seventy-five cents (75c) per car was exacted for loading; that upon the filing by said Union Stock Yard and Transit Company of its said tariff Supplement No. 1 to I. C. C. No. 6 there were filed with said Interstate Commerce Commission formal protests against said tariff, whereupon said Interstate Commerce Commission from time to time thereafter suspended the operation of said tariff and set the matter down for hearing under its Investigation and Suspension Docket No. 1118.

That on or about October 2, 1917, the Chicago Live
565 Stock Exchange, on behalf of its members and others engaged in the buying, selling and shipping of live stock to and at the Union Stock Yards at Chicago, Illinois, filed a complaint in writing with the Interstate Commerce Commission, alleging and charging said loading and unloading charges so fixed in said tariff I. C. C. No. 2, filed with said Interstate Commerce Commission by said defendant the Union Stock Yard and Transit Company and effective May 21, 1917, as aforesaid, to be unlawful, unjust and unreasonable under the Interstate Commerce Act; that the said Interstate Commerce Commission thereupon docketed said complaint under Interstate Commerce Commission Docket No. 9977; that the said carriers hereinabove specifically named, which were made defendants in said Case No. 9977 before said Interstate Commerce Commission, are the same carriers and railroads which are named in said petition filed in this court on the 8th day of December, A. D. 1928, as aforesaid; that said corporate carriers and railroads filed their answers to said complaint in said case No. 9977 before said Interstate Commerce Commission and the issues in said case were duly made; that said case Docket No. 9977 and said case Investigation and Suspension Docket No. 1118 were thereafter, by appropriate proceedings, duly consolidated before said Interstate Commerce Commission for hearing; that thereafter a full hearing was had with reference to said cases no or about February 11, 1919, at which hearing representatives of said Chicago Live Stock Exchange and of said corporate carriers and railroads were present and participated therein; that thereafter said Interstate Commerce Commission issued its report and decision in

said consolidated cases and dismissed said complaint, said report and decision being reported in 52 I. C. C. 209, at-
566 tached to the petition heretofore filed in this court on the 8th day of December, A. D. 1928, and therein designated Exhibit "C" to said petition and being made a part of said petition; that on or about April 14, 1919, upon petition of the complainant in said complaint Docket No. 9977 for rehearing and application to amend its complaint by making the Director General of Railroads a party defendant, the said Interstate Commerce Commission issued an order in said Docket No. 9977 and said Investigation and Suspension Docket No. 1118, in words and figures as follows:

"Supplemental Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of April, A. D. 1919.

No. 9977

Chicago Live Stock Exchange

vs.

The Atchison, Topeka & Santa Fe Railway Company *et al.*
Investigation and Suspension Docket No. 1118.

In the Matter of the Investigation and Suspension of Live Stock Loading and Unloading Charges at Chicago, Ill.

Upon further consideration of the records in the above-entitled proceedings, of petition for rehearing filed by the Chicago Live Stock Exchange and Union Stock Yard & Transit Company, and of application of the Chicago Live Stock Exchange to amend its complaint by making the Director General of Railroads a party defendant:

It Is Ordered, That these proceedings be, and they are hereby, reopened for further hearing, on the question of the amount of the loading and unloading charges for live stock at the Chicago stock yards, and the amount of such charges, if any, that should be imposed upon shippers of live stock, or should be absorbed by the defendants and whether the Chicago Stock Yards are terminals of the Chicago Junction Rail-

way Company, and whether the tariff arrangements be-
567 tween the Union Stock Yards & Transit Company and the other defendants with respect to the delivery and handling of live stock at the Union Stock Yards in Chicago are in compliance wiht the act.

It Is Further Ordered, That the petition of the Union Stock Yard & Transit Company, so far as it seeks a reopening of the case for the purpose of reconsideration of the finding that it is a common carrier, be, and it is hereby, denied.

It Is Further Ordered, That Walker D. Hines, Director General of Railroads, be, and he is hereby, made an additional party respondent herein.

It Is Further Ordered, That a copy of this order be served upon each of the parties to these proceedings.

And It Is Further Ordered, That these proceedings be, and they are hereby, assigned for further hearing on May 20, 1919, ten o'clock a. m., at United States Court Room, Chicago, Ill., before Examiner Gerry.

By the Commission:

GEORGE B. MCGINTY,
(Seal) *Secretary.*"

That thereafter said consolidated case, Docket No. 9977, and said Investigation and Susension Docket No. 1118, duly consolidated as aforesaid, were reheard by said Interstate Commerce Commission, the said Director General of Railroads being duly represented and taking an active part in said proceedings; that thereafter, on or about July 15, 1920, said Interstate Commerce Commission issued its report on further hearing reported in 58 I. C. C. 164, and found that the said unloading charges were unlawful and in violation of the Interstate Commerce Act, said decision and report being attached to the said petition heretofore filed in this court in this cause and there designated Exhibit "B" and made a part of said petition by reference; that on February 25, 1921, there was duly filed with said Interstate Commerce Commission a complaint for reparation on behalf of upwards of one hun-
dred seventy-four thousand (174,000) shippers of live
568 stock who had been damaged by the assessment and collection of said loading and unloading charges hereinabove set forth in the amount of such charges paid for them; that said complaint was given Interstate Commerce Commission Docket No. 12614; that said complaint for reparation was filed by the following named persons, or their legal prede-

cessors, who were members of said Chicago Live Stock Exchange between the dates of December 28, 1917, and February 28, 1920, when said excessive and unreasonable loading and unloading charges were paid, and who are plaintiffs named in Paragraph 2 of the petition herein:

Geo. J. Adams and A. W. Kitchen, copartners trading as Adams & Kitchen.

John G. Adler and Alfred E. Adler, copartners trading as Adler Sons & Company.

Alexander, Conover and Martin, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

John A. Babcock, an individual trading as John A. Babcock & Company.

Fred L. Heyne and E. H. Baker, copartners trading as Baker, Heyne & Company.

W. A. Peterson, trading as Bacon, Peterson & Company.

Bowles Live Stock Commission Company, a corporation organized and existing under the laws of the State of West Virginia with its principal place of business at Chicago in the State of Illinois.

E. C. Brown and Seth E. St. John, copartners trading as Brown-St. John Company.

569 Thos. H. Brown.

George M. Brownson and J. L. Ettlinger, copartners trading as Brownson & Ettlinger.

Byers Brothers Company, a corporation organized and existing under the laws of the State of Missouri with its principal place of business at Chicago in the State of Illinois.

Wm. B. Swiney, Chas. M. Swiney and Thos. E. Swiney, copartners trading as Swiney Bros., successors to Bunker & Swiney.

J. B. Cahill, trading as J. B. Cahill & Company.

Central Live Stock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Ernest Clark and Louis Armbrecht, copartners trading as Clark, Armbrecht & Company.

E. A. Clark, trading as Clark, Bowles & Company.

John Clay, John G. Forrest, C. A. Kleman, F. H. Connor and C. L. Robinson, copartners trading as Clay, Robinson & Company.

James R. Clegg, an individual trading as James R. Clegg & Company.

A. M. Henneberry and N. W. Cochran, copartners trading as Cochran & Henneberry.

W. P. Collings, trading as W. P. Collings & Son.

Conklin Bros. Commission Company, a coporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

570 H. D. Copeland & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

J. M. Corrick.

J. F. Cross and H. G. Sommers, copartners trading as Cross, Sommers & Company.

A. B. Daniels.

P. T. Dolan and Fred Ludeman, copartners trading as Dolan & Ludeman.

J. M. Doud & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

S. S. Driver, an individual trading as S. S. Driver & Company.

Chas. R. Beason and P. E. Moore, copartners trading as Drovers Commission Company.

J. W. Eastland, an individual trading as J. W. Eastland & Company.

Guy Wheeler and T. K. Polley, corpartners trading as Emmett, Wheeler & Polley.

E. H. Kuenster, surviving partner of copartnership of Erwin & Kuenster.

Evans, Snider, Buel Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Filler Wilson & McClelland, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

571 O. D. Freeland and C. M. Godfrey, copartners trading as Freeland & Godfrey.

Fred Freeman, an individual trading as Fred Freeman & Company.

P. J. Fitzgerald and G. S. Freeman, copartners trading as Freeman, Fitzgerald & Company.

Wm. Gentleman, A. M. Gentleman, C. F. Gentleman and G. J. Gentleman, copartners trading as Wm. Gentleman & Sons.

S. G. Gillogly, R. E. Gillogly, F. D. Gillogly and F. T. Gillogly, copartners trading as Gillogly & Company.

Chas. E. Harding, trading as Chas. E. Harding & Company.

Hefner Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Geo. F. Hogan, trading as Geo. F. Hogan & Company.

A. Warheimer, E. H. Ingwerson, J. H. Ingwerson, Dan R. Ingwerson, D. C. Mosier and A. C. Barroff, copartners trading as Ingwerson Bros.

Iowa Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois, with its principal place of business at Chicago in the State of Illinois.

I. W. Knettle and Edwin Knettle, copartners trading as Knettle Bros.

Knolfin Sheep Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

E. H. Kuenster, an individual trading as Kuenster Livestock Commission Company.

572 A. J. Laberthe.

L. S. Larrison, an individual trading as L. S. Larrison & Company.

Lee Live Stock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

F. C. Ludeman, an individual trading as F. C. Ludeman & Company.

McCausland, Hoag & Vaughn, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Wm. Mahoney.

J. P. Maley and Harry L. Carpenter, copartners trading as Maley, Carpenter & Company.

John P. Martin, James G. Martin, George E. Martin and Wm. S. Burmister, copartners trading as Martin Bros. & Company.

Miller White & Woods, a corporation organized and exist-

ing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

P. T. Dolan, trading as Miller & Dolan.

Frank R. Mullen, trading as Mullen Commission Company.

Robert S. Murray, trading as Murray & McDowell.

B. F. Hubbird, trading as Minteer Hubbird & Company.

National Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

573 Northwestern Livestock Commission, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

G. W. Nixon, C. S. Horn and W. H. Chisholm, copartners trading as Nixon, Horn & Chisholm.

North American Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

Silas Palmer and W. H. Palmer, copartners trading as Silas Palmer & Son.

T. B. Vincent and C. H. Boothroyd, copartners trading as Paris Commission Company.

W. C. Patterson, trading as John Patterson & Son.

W. A. Peterson and Wm. Turnbull, copartners trading as Peterson, Turnbull & Company.

J. H. Piatt, trading as Abner Piatt & Company.

Thos. K. Polley, trading as Thos K. Polley & Company.

R. H. Pritchard, trading as Pritchard Commission Company.

Chas. R. Rice and Oscar A. Rice, copartners trading as Rice Bros.

J. B. Roach and W. P. Roach, copartners trading as Roach Livestock Commission Company.

Rosenbaum Brothers & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

F. W. Sheldon, trading as F. W. Sheldon & Company.

W. Harry Sherwood and Russell H. Sherwood, co-
574 partners trading as Sherwood & Son.

J. Paul Shinn, Chas. H. Moberly and I. O. Fry, copart-

ners trading as Shinn, Fry & Moberly, successors to Shinn Fry & Company.

James G. Shutter.

W. R. Smith, J. C. Eastes and John Smith, copartners trading as W. R. Smith & Son.

T. B. Stafford and A. B. Stafford, copartners trading as Stafford Bros.

Standard Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

A. F. Starrett, Jr., O. A. Mathison, A. C. Granger and M. E. Peschong, copartners trading as Starrett, Mathison & Company.

Chas H. Stephens, and J. A. Goble, copartners trading as Stephens & Goble.

A. F. Stewart, trading as A. F. Stewart & Company.

J. E. Strader and J. L. Strader, copartners trading as Strader Bros.

J. J. Sullivan and J. C. Sullivan, co-partners trading as Sullivan Commission Company.

A. Gilmore, C. L. Swanson and C. J. Castenholz, copartners trading as Swanson, Gilmore & Castenholz.

Harry Thompson and C. N. Ball, copartners trading as Thompson & Ball.

Thos. Tipton, E. M. Steck and W. P. Herrick, copartners trading as Tipton, Steck & Herrick.

D. L. Trout and F. L. Trout, copartners trading as Trout Livestock Commission Company.

575 G. V. Van Norman, an individual trading as G. B. Van Norman & Company.

Van Norman Lawler & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois.

W. H. Walter, trading as Walter Bros.

A. A. Walters, C. A. Dunbar and J. H. Dunbar, copartners trading as Walters & Dunbar.

L. B. Werden.

W. W. Wilson and Chas. A. Wilson, copartners trading as W. W. Wilson & Company.

Jet Wimp, trading as Jet Wimp & Company.

Kay Wood and Chas. A. Wood, copartners trading as Wood Bros.

Curtis A. Wood and Walter R. Wood, copartners trading as Curtis A. Wood & Company.
L. B. Yancey.
W. E. Young, trading as W. E. Young & Company.

That said complaint was filed jointly by the above-named commission merchants and members of said Chicago Live Stock Exchange as representative of said shippers of live stock numbering upwards of one hundred seventy-four thousand (174,000), and whose names were contained in Appendix A attached to said complaint for reparation filed with said Interstate Commerce Commission; that although in said proceedings for reparation before said Interstate Commerce Commission the above-named commission merchants and members of said Chicago Live Stock Exchange acted jointly with each other, each of the above-named commission
576 merchants and members of said Chicago Live Stock Exchange in said proceedings respectively presented and represented the claims of the particular shippers of live stock whom they had previously represented and acted for as commission merchants in the various shipments of live stock made between December 28, 1917, and February 28, 1920, and upon which said unreasonable and unlawful loading and unloading charges were made; that in each instance where said unreasonable and unlawful loading and unloading charges were made, the same were paid to said corporate carriers and railroads, or the liability to pay the same was primarily and directly assumed by said commission merchants and members of said Chicago Live Stock Exchange and in the first instance paid out of the individual funds or moneys of said commission merchants and members of said Chicago Live Stock Exchange and charged back against said individual shippers or deducted from the proceeds due to said individual shippers from said shipments, with the representation and assurance by said commission merchants and members of said Chicago Live Stock Exchange that they, in behalf of said shippers, would present to said Interstate Commerce Commission a claim for reparation for the use and benefit of said shippers; that said proceedings for reparation before said Interstate Commerce Commission were prosecuted by the above-named commission merchants and members of said Chicago Live Stock Exchange, on the theory that each of said members of said Chicago Live Stock Exchange doing business in said Union Stock Yards as commission merchants was seeking reparation in a representative capacity for the use

and benefit of the particular shippers of live stock who, during said period between December 28, 1917, and February 28, 1920, had shipped live stock to such member, and which member in the first instance paid said excessive and unlawful
577 loading and unloading charges on shipments made by the particular customer shippers to such member, and primarily paid or assumed by said member and charged back to said individual customer shippers as aforesaid; that in said proceedings for reparation before said Interstate Commerce Commission said Interstate Commerce Commission proceeded on the theory and basis that each of said individual members of said Live Stock Exchange whose names are hereinabove mentioned and set forth, were seeking reparation as representatives of and for the use and benefit of the particular shippers whom they severally represented in said shipments of live stock made between December 28, 1917, and February 28, 1920, and whose identity was and is shown by the list of names of shippers set forth in Appendix A filed in said proceedings for reparation before said Interstate Commerce Commission for the purpose of making said shippers, (numbering upwards of one hundred seventy-four thousand (174,000) as aforesaid), parties to the record in said Interstate Commerce Commission proceedings; that said list of shippers so filed was duly registered and accepted by said Commission, as will more fully appear by the decisions, opinions and reports of said Interstate Commerce Commission in said reparation proceedings referred to and made a part of said petition heretofore filed in this court in the above entitled cause as aforesaid; that in said proceedings for reparation said Interstate Commerce Commission awarded reparation to each of said members of said Chicago Live Stock Exchange doing business in said Union Stock Yards as commission merchants, for the aggregate amount of the excessive loading and unloading charges primarily paid and assumed as aforesaid by each member on account of shipments made to such member by the particular shippers of live stock
578 represented in said shipments by such member, as will more fully appear from the order of said Commission in said consolidated cases Nos. 9977 and 12614, said order bearing date the 12th day day of December, A. D. 1927, a true and correct copy thereof being attached as Exhibit "A" to said petition filed in this court in the above entitled cause and made a part of said petition by reference and to the same extent and as fully as though the same were therein set out;

that each line or item in said Exhibit "A", under columns designated "Complainants", "Defendants" and "Amounts", are compilations made from Commission Exhibit 1-A, consisting of approximately twelve thousand (12,000) sheets filed in said Dockets Nos. 1118, 9977 and 12614 of said Interstate Commerce Commission, on which sheets there appears a detailed and precise statement of the history of each shipment on which said excesive and unlawful loading and unloading charges were made, and setting forth the number and initial of the car, the date of delivery, the number and date of the way-bill, the name of the originating station, the name of the consignor, the name of the consignee, the route, the commodity, the amount of reparation claimed, and the amount of interest at six per cent claimed on the amount of such reparation; that by comparing the various items on said sheets of said Exhibit 1-A with the items aforesaid set forth in said Exhibit "A" filed with the petition herein and made a part thereof by reference, the identity between each individual shipper mentioned and referred to in said Appendix A, consisting of upwards of one hundred seventy-four thousand (174,000) names, and the particular commission merchant and member of said Live Stock Exchange who represented said shipper in said shipments, and who in turn represented said shipper before said Interstate Commerce Commission in said claim for reparation, may be fully established;

579 That in the trial of the above entitled cause in this court there was introduced in evidence the complete records and files of said Interstate Commerce Commission in said Dockets Nos. 1118, 9977 and 12614, including said Appendix A, consisting of the names and identity of upwards of one hundred seventy-four thousand (174,000) shippers in whose behalf reparation was sought before said Interstate Commerce Commission as aforesaid, said Exhibit 1-A, consisting of approximately twelve thousand (12,000) sheets containing a detailed history of each shipment, the number and initial of the car, the date of its delivery, the number and date of the way-bill, the name of the originating station, the name of the consignor, the name of the consignee, the route, the commodity, the reparation claimed, and the interest claimed on said reparation, and the order of said Interstate Commerce Commission entered on the 12th day of December, A. D. 1927, as aforesaid, a copy of which is attached to the petition filed in the above entitled cause in this court and marked Exhibit A and made a part of said petition;

so that your petitioners represent to the court that from the record in this cause, and from the record in said Dockets Nos. 1118, 9977 and 12614 of said Interstate Commerce Commission, there is shown all of the facts hereinabove set forth, on the basis of which it can readily be determined that in said proceedings before said Interstate Commerce Commission each of the plaintiffs in the above entitled cause in this court represented and secured reparation for and on behalf of the individual shippers respectively represented by such plaintiffs during the period aforesaid.

Your petitioners further show to the court that by reason of the facts and circumstances hereinabove set forth each of your petitioners (who are identical with the plain-
580 tiffs named in said petition filed in this court in the above entitled cause on the 8th day of December, A. D. 1928) by operation of law became and now are trustees of an express trust, with the duty and obligation of enforcing in this court in their respective representative capacities, for the use and benefit of the individual shippers whom they represented in said shipments and whom they represented in said proceedings for reparation before said Interstate Commerce Commission, the award of reparation made to them by said Interstate Commerce Commission as representatives of and for the use and benefit of said individual shippers.

Your petitioners further show unto the court that in the petition heretofore filed in this court in the above entitled cause on the 8th day of December, A. D. 1926, your petitioners brought this suit in their individual names as plaintiffs, on the theory that because of the fact that they in the first instance paid to said defendants the amount of said excessive and unlawful loading and unloading charges, that there was such privity between them and the defendants in said cause as would legally entitle your petitioners to institute said suit in this court to enforce said award of reparation of said Interstate Commerce Commission, but that Your Honor has held against this theory, and has heretofore, on that ground, directed the jury impanelled to try said cause, to return a verdict of not guilty against the above-named defendants; that your petitioners respectfully petition Your Honor for leave to amend their said petition filed in this court in the above entitled cause on the 8th day of December, A. D. 1928, by changing the capacity in which said plaintiffs bring this suit to a representative capacity, whereby each of your
581 petitioners and plaintiffs named in the said petition filed in this court in the above entitled cause, as aforesaid,

may sue to enforce said award of reparation of said Interstate Commerce Commission as representatives and trustees of the particular shippers of live stock whom they represented in the various shipments covered by said order of reparation of said Interstate Commerce Commission and whose claims for reparation were presented and prosecuted by them as aforesaid before said Interstate Commerce Commission.

Your petitioners attach hereto, as a part of this motion to amend petition, their proposed amendment, same being marked Exhibit "A".

EDWIN W. SIMS
ELWOOD G. GODMAN
FRANKLIN J. STRANSKY
CLAIR R. HILLYER
Attorneys for said plaintiffs.

State of Illinois } ss.
County of Cook }

CLAIR R. HILLYER, being first duly sowrn, on oath deposes and says:

That he is of counsel for the plaintiffs in the above entitled cause; that he has read and carefully examined the above and foregoing motion to amend petition and is thoroughly familiar with the contents thereof; that he was attorney for said plaintiffs and for said Chicago Live Stock Exchange in all of the various proceedings before said
582 Interstate Commerce Commission subsequent to April 1, 1919; that he attended all of the hearings in said matters before said Interstate Commerce Commission subsequent to April 1, 1919; that previous to the time of the institution of said proceedings, and at the time of the pendency thereof, he had full knowledge of the relationship between said plaintiffs and the individual shippers whom they represented in said proceedings, and that the facts as hereinabove set forth in said motion to amend said petition are true as therein stated.

CLAIR R. HILLYER

Subscribed and sworn to before me, the undersigned Notary Public in and for the County of Cook and State of Illinois, this 11th day of April, A. D. 1930.

FRANCES BECKER
Notary Public.

(Seal)

583 * * (Caption) * *

AMENDMENT TO PETITION.

Now comes the plaintiffs in the above entitled cause, by Edwin. W. Sims, Elwood G. Godman, Franklin J. Stransky and Clair R. Hillyer, their attorneys, and, by leave of court first obtained, file this as their amendment to the petition in the above entitled cause filed in this court on the 8th day of December, A. D. 1928.

1. Strike from paragraph (2) of said petition, on page 2 thereof, after the word "plaintiffs" in the first line of said paragraph, the following:

"are, and each of them is, named in an order of the Interstate Commerce Commission entered on the 12th day of December, 1927, as being entitled to receive from the defendants hereinafter named the amounts respectively set forth in said order of the Commission, a copy of which is hereto attached as Exhibit 'A' and made a part hereof to the same extent and as fully as though the same were here set out:

The following named are the plaintiffs herein and are the parties entitled to receive the damages awarded by the Interstate Commerce Commission:"

584 2. At the end of said paragraph (2) of said petition, on page 9 thereof, insert the following:

That the above mentioned plaintiffs bring this suit as trustees and representatives for the use and benefit of the individual shippers whom they or their legal predecessors represented in the shipments of live stock and in the proceedings for reparation before the Interstate Commerce Commission, by virtue of the following facts, viz:

That prior to May 21, 1917, there was in effect a tariff published and filed with the Interstate Commerce Commission by the Union Stock Yard and Transit Company, one of the defendants in the above entitled cause, which provided that charges of twenty-five cents (25c) for unloading each car of live stock and fifty cents (50c) for loading each car of live stock would be assessed by said defendant, the Union Stock Yard and Transit Company, on all cars of live stock loaded or unloaded by it at the Union Stock Yards in Chicago, Illinois; that there was also in effect another tariff published and filed with the Interstate Commerce Commission, to which the following named railroads were parties, viz: The Atchison,

Topeka & Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Chesapeke and Ohio Railway Company of Indiana; The Chicago and Alton Railroad Company, and William W. Wheelock and William G. Bierd, Receivers; Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Com-
585 pany; Chicago Junction Railway Company; Chicago, Milwaukee and St. Paul Railway Company, and H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers; The Chicago, Rock Island and Pacific Railway Company; Chicago, Terre Haute & Southeastern Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Grand Trunk Western Railway Company; Illinois Central Railroad Company; Indiana Harbor Belt Railroad Company; The Michigan Central Railroad Company; Minneapolis, St. Paul & Sault Ste Marie Railway Company; New York Central Railroad Company; New York, Chicago & St. Louis Railroad Company; The Pennsylvania Railroad Company; Pere Marquette Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and Harry A. Dunn, Receivers; and Wabash Railway Company, all of which railroads and systems of transportation were operated and controlled by the predecessors in office of said Andrew W. Mellon during the period of Federal control of railroads, to-wit: December 28, 1917, to March 1, 1920; that all of said railroad companies and corporations last named have and during said period of Federal control had systems of transportation and roads running through the Eastern Division of the Northern District of Illinois, with the exception of The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and Harry A. Dunn, Receivers, which railroad company is now a part of the system of the New York, Chicago & St. Louis Railroad Company, and which system has a road running through the Eastern Division of the Northern District of Illinois; that said last-mentioned tariff, to which said railroads were parties, provided that the sum of twenty-five cents (25c) for unloading each car of live
586 stock and fifty cents (50c) for loading each car of live stock would be absorbed and paid by said railroad com-

panies, respectively, to said Union Stock Yard and Transit Company on all cars of live stock loaded or unloaded by that company at said Union Stock Yards and shipped into said Union Stock Yards by said railroads; that said last-mentioned tariff was and is known as Agent L. A. Lowry's Tariff 20-J, I. C. C. No. 37, and supplements thereto.

That effective May 21, 1917, the defendant the Union Stock Yard and Transit Company, filed with said Interstate Commerce Commission its tariff I. C. C. No. 2, whereby it increased said charges from twenty-five cents (25c) per car for unloading to fifty cents (50c) per car for unloading, and from fifty cents (50c) per car for loading to seventy-five cents (75c) per car for loading; that no tariff was filed with said Interstate Commerce Commission by said railroads absorbing said increase in said unloading and loading charges, and therefore all shippers and receivers of live stock were, after May 21, 1917, compelled to pay and did pay to said defendant the Union Stock Yard and Transit Company and to said railroads said increase in the charge, viz: twenty-five cents (25c) per car for unloading and twenty-five cents (25c) per car for loading, in accordance with said increase created by said tariff I. C. C. No. 2 filed as aforesaid with said Interstate Commerce Commission by said defendant Union Stock Yard and Transit Company; that effective with the taking over of said railroads under federal control on December 28, 1917, all shippers and receivers of live stock to and at said Union Stock Yards were compelled to and did pay to the

respective Director Generals of Railroads appointed by
587 the President of the United States in accordance with

the law, the said increase of twenty-five cents (25c) per car for unloading and the said increase of twenty-five cents (25c) per car for loading; that during the said period from December 28, 1917, to March 1, 1920, the stock yards of the said defendant the Union Stock Yard and Transit Company were the terminals of the predecessors in office of the said defendant Andrew W. Mellon in each of the shipments of live stock hereinafter referred to and on which the sum of fifty cents (50c) per car was exacted for unloading and the sum of seventy-five cents (75c) per car was exacted for loading; that upon the filing by said Union Stock Yard and Transit Company of its said tariff Supplement No. 1 to I. C. C. No. 6, there were filed with said Interstate Commerce Commission formal protests against said tariff, whereupon said Interstate Commerce Commission from time to time thereafter

suspended the operation of said tariff and set the matter down for hearing under its Investigation and Suspension Docket No. 1118.

That on or about October 2, 1917, the Chicago Live Stock Exchange, on behalf of its members and others engaged in the buying, selling and shipping of live stock to and at the Union Stock Yards at Chicago, Illinois, filed a complaint in writing with the Interstate Commerce Commission, alleging and charging said loading and unloading charges so fixed in said tariff I. C. C. No. 2, filed with said Interstate Commerce Commission by said defendant the Union Stock Yard and Transit Company and effective May 21, 1917, as aforesaid, to be unlawful, unjust and unreasonable under the Interstate Commerce Act; that the said Interstate Commerce Commission thereupon docketed said complaint under Interstate
588 Commerce Commission Docket No. 9977; that the said carriers hereinabove specifically named, which were made defendants in said Case No. 9977 before said Interstate Commerce Commission, are the same carriers and railroads which are named in said petition filed in this court on the 8th day of December, A. D. 1928, as aforesaid; that said corporate carriers and railroads filed their answers to said complaint in said case No. 9977 before said Interstate Commerce Commission and the issues in said case were duly made; that said case Docket No. 9977 and said case Investigation and Suspension Docket No. 1118 were thereafter, by appropriate proceedings, duly consolidated before said Interstate Commerce Commission for hearing; that thereafter a full hearing was had with reference to said cases, on or about February 11, 1919, at which hearing representatives of said Chicago Live Stock Exchange and of said corporate carriers and railroads were present and participated therein; that thereafter said Interstate Commerce Commission issued its report and decision in said consolidated cases and dismissed said complaint, said report and decision being reported in 52 I. C. C. 209, attached to the petition heretofore filed in this court on the 8th day of December, A. D. 1928, and therein designated Exhibit "C" to said petition and being made a part of said petition; that on or about April 14, 1919, upon petition of the complainant in said complaint Docket No. 9977 for rehearing and application to amend its complaint by making the Director General of Railroads a party defendant, the said Interstate Commerce Commission issued an order in said Docket No. 9977 and said Investigation and Suspension Docket No. 1118, in words and figures as follows:

589 "Supplemental Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of April, A. D. 1919.

No. 9977.

Chicago Live Stock Exchange

vs.

The Atchison, Topeka & Santa Fe Railway Company, *et al.*
Investigation and Suspension Docket No. 1118.

In the Matter of the Investigation and Suspension of Live Stock Loading and Unloading Charges at Chicago, Ill.

Upon further consideration of the records in the above entitled proceedings, of petition for rehearing filed by the Chicago Live Stock Exchange and Union Stock Yard and Transit Company, and of application of the Chicago Live Stock Exchange to amend its complaint by making the Director General of Railroads a party defendant:

It Is Ordered, That these proceedings be, and they are hereby, reopened for further hearing, on the question of the amount of the loading and unloading charges for live stock at the Chicago stock yards, and the amount of such charges, if any, that should be imposed upon shippers of live stock, or should be absorbed by the defendants and whether the Chicago Stock Yards are terminals of the Chicago Junction Railway Company, and whether the tariff arrangements between the Union Stock Yard & Transit Company and the other defendants with respect to the delivery and handling of live stock at the Union Stock Yards in Chicago are in compliance with the act.

It Is Further Ordered, That the petition of the Union Stock Yard & Transit Company, so far as it seeks a reopening of the case for the purpose of reconsideration of the finding that it is a common carrier, be, and it is hereby, denied.

It Is Further Ordered, That Walker D. Hines, Director General of Railroads, be, and he is hereby, made an additional party respondent herein.

It Is Further Ordered, That a copy of this order be served upon each of the parties to these proceedings.

And It Is Further Ordered, That these proceedings be and they are hereby assigned for further hearing on May
590 20, 1919, ten o'clock a. m., at United States Court Room, Chicago, Illinois, before Examiner Gerry.

By the Commission:

GEORGE B. McGINTY,
(Seal) *Secretary.*"

That thereafter said consolidated case, Docket No. 9977, and said Investigation and Suspension Docket No. 1118, duly consolidated as aforesaid, were reheard by said Interstate Commerce Commission, the said Director General of Railroads being duly represented and taking an active part in said proceedings; that thereafter, on or about July 15, 1920, said Interstate Commerce Commission issued its report on further hearing reported in 58 I. C. C. 164, and found that the said unloading and loading charges were unlawful and in violation of the Interstate Commerce Act, said decision and report being attached to he said petition heretofore filed in this court in this cause and there designated Exhibit "B" and made a part of said petition by reference; that on February 25, 1921, there was duly filed with said Interstate Commerce Commission a petition or complaint for reparation on behalf of upwards of 174,000 shippers of live stock who had been damaged by the assessment and collection of said loading and unloading charges hereinabove set forth in the amount of such charges paid for them; that said complaint was given Interstate Commerce Commission Docket No. 12614; that said complaint for reparation was filed by the above-named plaintiffs, or their legal predecessor, who were members of said Chicago Live Stock Exchange between the dates of December 28, 1917, and February 28, 1920, when said excessive and unreasonable loading and unloading charges were paid.

That said petition or complaint for reparation was filed jointly by the above named commission merchants and
591 members of said Chicago Live Stock Exchange as representatives of said shippers of live stock numbering upwards of one hundred seventy-four thousand (174,000), and whose names were contained in Appendix A attached to said complaint for reparation filed with said Interstate Commerce Commission; that although in said proceedings for reparation before said Interstate Commerce Commission the above-named commission merchants and members of said Chicago Live Stock Exchange acted jointly with each other, each of the above-named commission merchants and members of said Chi-

cago Live Stock Exchange in said proceedings respectively presented and represented the claims of the particular shippers of live stock whom they had previously represented and acted for as commission merchants in the various shipments of live stock made between December 28, 1917, and February 28, 1920, and upon which said unreasonable and unlawful loading and unloading charges were made; that in each instance where said unreasonable and unlawful loading and unloading charges were made, the same were paid to said corporate carriers and railroads, or the liability to pay the same was primarily and directly assumed by said commission merchants and members of said Chicago Live Stock Exchange and in the first instance paid out of the individual funds or moneys of said commission merchants and members of said Chicago Live Stock Exchange and charged back against said individual shippers or deducted from the proceeds due to said individual shippers from said shipments, with the representation and assurance by said commission merchants and members of said Chicago Live Stock Exchange that they, in behalf of said shippers, would present to said Interstate Commerce Commission a claim for reparation for the use and benefit of said shippers; that said proceedings for reparation before said Interstate Commerce Commission were
592 prosecuted by the above-named commission merchants and members of said Chicago Live Stock Exchange, on the theory that each of said members of said Chicago Live Stock Exchange doing business in said Union Stock Yards as commission merchants was seeking reparation in a representative capacity for the use and benefit of the particular shippers of live stock who, during said period between December 28, 1917, and February 28, 1920, had shipped stock to such member, and which member in the first instance paid said excessive unlawful loading and unloading charges on shipments made by the particular customer shippers to such member, and primarily paid or assumed by said member and charged back to said individual customer shippers as aforesaid; that in said proceedings for reparation before said Interstate Commerce Commission said Interstate Commerce Commission proceeded on the theory and basis that each of said individual members of said Live Stock Exchange whose names are hereinabove mentioned and set forth in paragraph 2 of the petition herein, were seeking reparation as representatives of and for the use and benefit of the particular shippers whom they severally represented in said shipments of live stock made between December 28, 1917, and February

28, 1920, and whose identity was and is shown by the list of names of shippers set forth in Appendix A filed in said proceedings for reparation before said Interstate Commerce Commission, for the purpose of making said shippers, numbering upwards of one hundred seventy-four thousand (174,000), as aforesaid, parties to the record in said Interstate Commerce Commission proceedings; that said list of shippers so filed was duly registered and accepted by said Commission, as will more fully appear by the decisions, opinions and reports of said Interstate Commerce Commission in said
593 reparation proceedings referred to and made a part of said petition heretofore filed in this court in the above entitled cause as aforesaid; that in said proceedings for reparation said Interstate Commerce Commission awarded reparation to each of said members of said Chicago Live Stock Exchange doing business in said Union Stock Yards as commission merchants, for the aggregate amount of the excessive loading and unloading charges primarily paid and assumed as aforesaid by each member on account of shipments made to such member by the particular shippers of live stock represented in said shipments by such member, as will more fully appear from the order of said Commission in said consolidated cases Nos. 9977 and 12614, said order bearing date the 12th day of December, A. D. 1927, a true and correct copy thereof being attached as Exhibit "A" to said petition filed in this court in the above entitled cause and made a part of said petition by reference and to the same extent and as fully as though the same were therein set out.

Plaintiffs represent that in the said proceedings hereinabove set forth before the said Interstate Commerce Commission they, and each of them, well knew that in the records and files in said proceedings before said Interstate Commerce Commission, as well as by verbal statements and representations made in said proceedings before said Interstate Commerce Commission by the attorneys and representatives of these plaintiffs, it was expressly stated and set forth that they were acting for and on behalf of the several individual shippers whom they respectively represented in said shipments and whom they jointly represented in said proceedings for reparation before said Interstate Commerce Commission and in the capacity of trustees of an express declared trust in favor of an for the use and benefit of the respective shippers whom they represented in said shipments and whom they
594 represented in said proceedings for reparation before said Interstate Commerce Commission, and that they, and

each of them, well knew that said individual shippers had knowledge of said proceedings before said Interstate Commerce Commission and acquiesced in the representation of their said several claims for reparation by said plaintiffs. Wherefore, plaintiffs represent that by operation of law they became and now are trustees of an express trust, with the duty and obligation of enforcing in this court, in their respective representative capacity, for the use and benefit of the individual shippers whom they severally represented in said shipments and whom they represented in said proceedings for reparation before said Interstate Commerce Commission, the award of reparation made to them, as hereinafter set forth, by said Interstate Commerce Commission, in the sum of One Hundred Forty Thousand and One Dollars and Twenty-five Cents ($140,001.25), as representatives of and for the use and benefit of said individual shippers, and in that capacity they bring this suit.

3. Strike from said petition paragraph 8, paragraph 9, paragraph 10, paragraph 12, paragraph 13, paragraph 14 and paragraph 16 thereof, found on pages 13 to 19, inclusive.

4. Strike from said petition paragraph 17, on pages 19 and 20 of said petition, and insert in lieu thereof the following:

(17) Plaintiffs further represent that in said consolidated cases Nos. 9977 and 12614, these plaintiffs, or their legal predecessors, represented before said Interstate Com-
595 merce Commission the rights and interest of said shippers, numbering upwards of one hundred seventy-four thousand (174,000), as hereinabove set forth; that said Interstate Commerce Commission in said consolidated cases Nos. 9977 and 12614, held public meetings, at which meetings evidence was heard and taken in said causes, and at which hearing said defendants were represented; that after said public hearings had been fully completed and said consolidated causes fully argued by representatives of all of said parties in interest, said Interstate Commerce Commission, on or about June 2, 1925, issued its consolidated decision and report in said causes, in which it found that the loading and unloading charges above referred to and described were unjust and unreasonable, and that reparation, with legal interest, should be made by said defendants on account of the collection by said defendants of said unjust and unreasonable charges, which said decision and report is reported in 100 I. C. C. 226, a copy thereof being hereto attached, marked Exhibit "D",

and made a part hereof as though the same were fully set forth in this petition.

SIMS GODMAN & STRANSKY,
Attorneys for Plaintiffs.

EDWIN W. SIMS,
ELWOOD G. GODMAN,
FRANKLIN J. STRANSKY,
CLAIR R. HILLYER,
Of Counsel.
Continental Illinois Bank Building,
Chicago, Illinois.

596 And afterwards, to wit, on April 18, being the day theretofore set by the court, the court heard the argument of counsel on the motion of the plaintiffs to vacate the orders of the court entered in this cause on January 28, 1930, and the motion of the plaintiffs to amend their original petition in this cause, and at the conclusion of said argument said matter was taken under advisement by the court. Said order taking same under advisement appears in the record proper and reference thereto is hereby made.

And afterwards, to wit, on July 31, 1930, being one of the days of the regular July 1930 term, the motion of the plaintiffs to vacate the orders of the court of January 28, 1930, and the motion of the plaintiffs to amend their original petition in this cause were, and each of them was, denied by the court.

To which ruling of the court the plaintiffs and each of them by their counsel then and there duly excepted.

Thereupon the court filed its opinion in this cause on the motions of the plaintiffs to set aside the orders of January 28, 1930, and to amend their original petition herein. Said opinion appears in the record proper and reference to the same is hereby made.

Thereupon, to wit, on July 31, 1930, the court made and entered of record its order granting the plaintiffs until September 22, 1930, for filing an appeal bond in the sum of five hundred dollars ($500.00), and until October 6, 1930, for filing their bill of exceptions. Thereafter, to wit, on August 28, 1930, being one of the days of the regular July 1930 term, the court amended its order of July 31, 1930, whereby an appeal was allowed the plaintiffs upon filing an appeal bond on or before September 22, 1930, and Bill of Exceptions to be

filed October 6, 1930, and said order of amendment was
597 entered of record. Thereafter and within the time originally fixed for filing the bill of exceptions the court made and entered of record an order enlarging the time for filing said bill of exceptions to October 25, 1930, and also entered its order extending the time for the plaintiffs to docket their appeal in the office of the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit to October 31, 1930. All of the aforesaid orders appear in the record proper and reference to them is hereby made.

cate of ge. Forasmuch as the matters above set forth do not otherwise appear of record, the plaintiffs and each of them tender this their bill of exceptions which contains all the evidence introduced by all of the parties at the trial of the above-entitled cause, and pray that said bill may be allowed, settled, signed, sealed, filed, and made a part of the record in this cause, all of which is accordingly done by the court and by the Judge of this court pursuant to the statute in such case made and provided, all on this 24th day of October, A. D. 1930, which is within the time heretofore granted by the court within which to file said bill of exceptions.

CHARLES E. WOODWARD
Judge of the United States District Court
for the Northern District of Illinois.

ed Oct. 24, 0. 599 And afterwards, to wit, on the 24th day of October, 1930, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward District Judge, appears the following entry, to wit:

600 * * (Caption.) * *

ORDER.

Now come the parties hereto by their respective counsel, upon the presentation to the court for allowing settling, signing, sealing and filing, the bill of exceptions on behalf of the plaintiffs herein, and counsel for the defendants having agreed in open court that the said bill of exceptions is correct and proper, and the court having examined the same and being satisfied that said bill of exceptions is correct and proper,

It Is Ordered that the said bill of exceptions on behalf of

the plaintiffs herein be and the same is hereby allowed, settled, signed, sealed, filed and made a part of the record in this cause, all of which is done on this 24th day of October, 1930, within the time fixed theretofore by the court.

CHARLES E. WOODWARD
District Judge

601 And afterwards, to wit, on the 24th day of October 1930, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward District Judge, appears the following entry, to wit: Entered 1930.

602 * * (Caption.) * *

ORDER.

On motion of the plaintiffs and consent of the defendants by their counsel in open court, and it being the opinion of the court that certain original papers and documents should be transmitted to the United States Circuit Court of Appeals for the Seventh Judicial Circuit for consideration by the court in connection with the appeal of the plaintiffs herein, It Is Therefore

Ordered that the following papers, maps, photographs, documents, and box, to-wit: Defendants' Exhibits No. 1, Nos. 5 to 43 inclusive, and No. 45, which are referred to and described in the Bill of Exceptions and incorporated therein by reference be separately transmitted under his proper certificate by the Clerk of this court to the Clerk of the United States Circuit Court of Appeals for the Seventh Judicial Circuit and to be returned after the disposition of the 603 said appeal to the Clerk of this court.

CHARLES E. WOODWARD
District Judge.

Dated October 24, 1930.

294 And on, to wit, the 22nd day of September, 1930 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in words and figures following, to wit:

pt. 30, 295 * * * (Caption.) * *

ASSIGNMENT OF ERRORS.

And now come the plaintiffs-appellants, Geo. J. Adams and A. W. Kitchen, copartners trading as Adams & Kitchen; John G. Adler and Alfred E. Adler, copartners trading as Adler Sons & Company; Alexander, Conover and Martin, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; John A. Babcock, an individual trading as John A. Babcock & Company; Fred L. Heyne and E. H. Baker, copartners trading as Baker, Heyne & Company; W. A. Peterson, trading as Bacon, Peterson & Company; Bowles Live Stock Commission Company, a corporation organized and existing under the laws of the State of West Virginia with its principal place of business at Chicago in the State of Illinois; E. C. Brown and Seth B. St. John, copartners trading as Brown-St. John Company; Thos. H. Brown; George M. Brownson and J. L. Ettlinger, copartners trading as Brownson & Ettlinger; Byers Brothers Company, a corporation organized and existing under the laws of the State of
Missouri with its principal place of business at Chicago
296 in the State of Illinois; Wm. B. Swiney, Chas. M. Swiney and Thos. E. Swiney, copartners trading as Swiney Bros., successors to Bunker & Swiney; J. B. Cahill, trading as J. B. Cahill & Company; Central Live Stock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Ernest Clark and Louis Armbrecht, copartners trading as Clark, Armbrecht & Company; E. A. Clark, trading as Clark, Bowles & Company; John Clay, John G. Forrest, C. A. Kleman, F. H. Connor and C. L. Robinson, copartners trading as Clay, Robinson & Company; James R. Clegg, an individual trading as James R. Clegg & Company; A. M. Henneberry and N. W. Cochran, copartners trading as Cochran & Henneberry; W. P. Collings, trading as W. P. Collings & Son; Conklin Bros. Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; H. D. Copeland & Company, a corporation organized and existing under the laws of the State of Illinois

with its principal place of business at Chicago in the State of Illinois; J. M. Corrick; J. F. Cross and H. G. Sommers, copartners trading as Cross, Sommers & Company; A. B. Daniels; P. T. Dolan and Fred Ludeman, copartners trading as Dolan & Ludeman; J. M. Doud & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; S. S. Driver, an individual trading as S. S. Driver & Company; Chas. R. Beason and P. E. Moore, copartners trading as Drovers Commission Company; J. W. Eastland, an individual trading as J. W. Eastland & Company; Guy Wheeler and T. K. Polley, copartners trading as Emmett, Wheeler & Polley; E. H. Kuenster, surviving partner of co-
partnership of Erwin & Kuenster; Evans, Snider, Buel
297 Company, a corporation organized and existing under
the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Filler Wilson & McClelland, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; O. D. Freeland and C. M. Godfrey, copartners trading as Freeland & Godfrey; Fred Freeman, an individual trading as Fred Freeman & Company; P. J. Fitzgerald and G. S. Freeman, copartners trading as Freeman, Fitzgerald & Company; Wm. Gentleman, A. M. Gentleman, C. F. Gentleman and G. J. Gentleman, copartners trading as Wm. Gentleman & Sons; S. G. Gillogly, R. E. Gillogly, F. D. Gillogly and F. T. Gillogly, copartners trading as Gillogly & Company; Chas. E. Harding, trading as Chas. E. Harding & Company; Hefner Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Geo. F. Hogan, trading as Geo. F. Hogan & Company; A. Warheimer, E. H. Ingwerson, J. H. Ingwerson, Dan R. Ingwerson, D. C. Mosier and A. C. Barroff, copartners trading as Ingwerson Bros.; Iowa Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; I. W. Knettle and Edwin Knettle, copartners trading as Knettle Bros.; Knollin Sheep Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; E. H. Kuenster, an individual trading as Kuenster Livestock Commission Company; A. J. Laberthe; L. S. Larrison, an

individual trading as L. S. Larrison and Company; Lee Live Stock Commission Company, a corporation organized and
298 existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; F. C. Ludeman, an individual trading as F. C. Ludeman & Company; McCausland, Hoag & Vaughn, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Wm. Mahoney; J. P. Maley and Harry L. Carpenter, copartners trading as Maley, Carpenter & Company; John P. Martin, James G. Martin, George E. Martin and Wm. S. Burmister, copartners trading as Martin Bros. & Company; Miller White & Woods, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; P. T. Dolan, trading as Miller & Dolan; Frank R. Mullen, trading as Mullen Commission Company; Robert S. Murray, trading as Murray & McDowell; B. F. Hubbird, trading as Minteer Hubbird & Company; National Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Northwestern Livestock Commission, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; G. W. Nixon, C. S. Horn and W. H. Chisholm, copartners trading as Nixon, Horn & Chisholm; North American Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Silas Palmer and W. H. Palmer, copartners trading as Silas Palmer & Son; T. B. Vincent and C. H. Boothroyd, copartners trading as Paris Commission Company; W. C. Patterson, trading as John Patterson & Son; W. A. Peterson and Wm. Turnbull, copartners trading as Peterson, Turnbull & Company; J. H. Piatt, trading as
299 Abner Piatt & Company; Thos. K. Polley, trading as Thos. K. Polley & Company; R. H. Pritchard, trading as Pritchard Commission Company; Chas. R. Rice and Oscar A. Rice, copartners trading as Rice Bros.; J. B. Roach and W. P. Roach, copartners trading as Roach Livestock Commission Company; Rosenbaum Brothers & Company, a corporation organized and existing under the laws of the State of Illinois with its prnicipal place of business at Chicago in the State of Illinois; F. W. Sheldon trading as F. W. Sheldon

& Company; W. Harry Sherwood and Russell H. Sherwood, copartners trading as Sherwood & Son; J. Paul Shinn, Chas. H. Moberly and I. O. Fry, copartners trading as Shinn, Fry & Moberly, successors to Shinn Fry & Company; James G. Shutter; W. R. Smith, J. C. Eastes and John Smith, copartners trading as W. R. Smith & Son; T. B. Stafford and A. B. Stafford, copartners trading as Stafford Bros.; Standard Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; A. F. Starrett, Jr., O. A. Mathison, A. C. Granger and M. E. Peschong, copartners trading as Starrett, Mathison & Company; Chas. H. Stephens and J. A. Goble, copartners trading as Stephens & Goble; A. F. Stewart, trading as A. F. Stewart & Company; J. E. Strader and J. L. Strader, copartners trading as Strader Bros.; J. J. Sullivan and J. C. Sullivan, copartners trading as Sullivan Commission Company; A. Gilmore, C. L. Swanson and C. J. Castenholz, copartners trading as Swanson, Gilmore and Castenholz; Harry Thompson and C. N. Ball, copartners trading as Thompson & Ball; Thos. Tipton, E. M. Steck and W. P. Herrick, copartners trading as Tipton, Steck & Herrick; D. L. Trout and F. L. Trout, copartners trading as Trout Livestock Commission Company;

G. B. Van Norman, an individual trading as G. B. Van
300 Norman & Company; Van Norman Lawler & Company,

a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; W. H. Walter, trading as Walter Bros.; A. A. Walters, C. A. Dunbar and J. H. Dunbar, copartners trading as Walter & Dunbar; L. B. Werden; W. W. Wilson and Chas. A. Wilson, copartners trading as W. W. Wilson & Company; Jet Wimp, trading as Jet Wimp & Company; Kay Wood and Chas. A. Wood, copartners trading as Wood Bros.; Curtis A. Wood and Walter R. Wood, copartners trading as Curtis A. Wood & Company; L. B. Yancey; and W. E. Young, trading as W. E. Young & Company, by Sims Godman Stransky & Brewer, their attorneys, in connection with their appeal and say that in the record, proceedings, orders, and in the judgment herein grave and manifest error has intervened to the prejudice of the plaintiffs-appellants, in this to-wit:

1. The District Court erred in granting the motion of the defendant The Union Stock Yard & Transit Company for a directed verdict in its favor at the close of all of the evidence.

2. The District Court erred in granting the motion of the defendant Andrew W. Mellon, Director General of Railroads, as Agent, for a directed verdict in his favor at the close of all of the evidence.

3. The District Court erred in instructing the jury to find the issues in favor of the defendant The Union Stock Yard & Transit Company and against the plaintiffs.

4. The District Court erred in instructing the jury
301 to find the issues in favor of the defendant Andrew W. Mellon, Director General of Railroads, as Agent, and against the plaintiffs.

5. The District Court erred in instructing the jury to find the issues in favor of defendants and against the plaintiffs.

6. The verdict of the jury was contrary to law.

7. The verdict of the jury was contrary to the evidence.

8. The District Court erred in denying the motion of the plaintiffs for a new trial.

9. The District Court erred in denying the motion of the plaintiffs in arrest of judgment.

10. The District Court erred in entering judgment on the verdict.

11. The judgment was contrary to law and to the evidence.

12. The District Court erred in overruling the motions of the plaintiffs to revoke and set aside

(a) the court's order denying plaintiffs' motion for a new trial;

(b) the court's order denying plaintiffs' motion in arrest of judgment;

(c) the court's order entering judgment on the verdict.

13. The District Court erred in overruling the
302 motion of the plaintiffs to amend their original petition in said cause.

14. The District Court erred in entering judgment against the plaintiffs for costs.

15. The District Court erred in holding that plaintiffs were not entitled to recover the reparations awarded by the Interstate Commerce Commission to them, and in holding that the Interstate Commerce Commission had no authority to enter such order of reparations, and in holding that only the shippers of livestock were entitled to recover reparations in their own right, and that the order of reparations granted

plaintiffs herein was unenforceable in said District Court on their behalf.

16. The District Court erred in holding that plaintiffs as livestock commission men and factors were without authority to maintain a suit in the said District Court and to recover upon the reparations award of the Interstate Commerce Commission in their favor individually and as such factors, and in directing the jury to return a verdict in favor of the defendants and each of them and against the plaintiffs.

17. The District Court erred in sustaining the motion of the defendants to strike out the following testimony of Henry R. Park, a witness called and sworn on behalf of the 303 plaintiffs, as follows:

Mr. Godman: Q. Did you compile a record or a statement showing the car numbers, the dates of delivery, the contents of the car, the date of shipment and so on, for presentation to the Interstate Commerce Commission, in 9977 and 12514?

A. I did, yes, sir.

Q. And was such a statement filed with the Commission?

A. It was, yes, sir.

Q. From what did you make that statement up?

A. From the original records of the Commission firms, wherein their records are kept, showing the amount of freight charges and the different items paid to the Stock Yards companies on these shipments.

Q. What was the aggregate total paid by the plaintiffs in this cause to the Union Stock Yards & Transit Co., or the Director General of Railroads, if you know, or either of them, for this loading and unloading service?

Mr. Towner: I object to the question, if the court please, on the ground that that knowledge of the witness is secondary, based upon records concerning which there has been no testimony, and they are not produced here, and consequently it is hearsay.

Mr. McLaughlin: We join in that objection.

The Court: I think it is subject to that objection, and I will sustain the objection.

Mr. Godman: You gentlemen have here the records of the Interstate Commerce Commission, have you?

Mr. Towner: I might add, if your honor please, and not intending to interfere with Mr. Godman's examination, but for the purpose of clarity, we have present—I say we—the defendants have present in this court a complete record be-

fore the Interstate Commerce Commission, which includes
304 the documents that I assume Mr. Park has just under-
taken to testify about, and it is our intention to offer them in evidence, after the plaintiffs rest.

Mr. Godman: Well, I will offer that statement now, if you gentlemen will produce it.

Mr. McLaughlin: Well, it is Adams' Exhibit 1-A, isn't it, Mr. Park?

The Court: That is a good way to get at it.

Mr. Towner: Let me ask Mr. Park one question:

Q. This statement you have just testified about, Mr. Park, is that the statement that was introduced in the hearings before the Commission upon the hearing of October 3, 1922, and which was marked by the Commission Exhibit 1-A, was it not?

The Witness: Yes, sir.

Mr. Towner: Q. And you have turned over to me a copy of that exhibit, haven't you?

Mr. Park: I have.

Mr. Towner: Q. And is contained in that coffin-like box over there, isn't it?

A. It is.

Mr. Towner: Q. That is available for introduction if you wish.

Mr. Godman: If you will produce it.

Mr. Towner: Well, there it is.

Mr. Godman: You raised the objection; I was trying to get at this in a short way, but you want the statement in, and let us put it in.

Mr. Towner: I am not introducing this. I understood Mr. Godman wished to put it in, and if he does, there it is available for introduction by him.

Mr. Godman: May I have have it?

Mr. Towner: Sure.

305 Mr. Godman: I have never had the box.

Mr. McLaughin: The keys to the box, your witness has the key to the box. We simply have possession of the box.

Mr. Godman: You have the box and we have the keys.

Mr. Towner: The Stock Yards Company furnished the box and lock, and Mr. Park furnished the exhibit.

Mr. McLaughlin: And kept the keys.

Mr. Towner: And then the exhibit was deposited in the box, and the lock was locked, and Mr. Park has the key.

Mr. Godman: I will ask the witness to get the statements; if you are insisting upon your technical objection; that is the only way I can offer it.

Mr. Towner: Very well.

Mr. Godman: Will you get it, Mr. Park?

The Witness: With the help of another man.

Mr. McLaughlin: We will help you.

Mr. Godman: You raised the objection, and I am not to be criticized for putting it in. I wanted to get a summary of that entire matter.

The Witness: Here they are (indicating).

Mr. Godman: Are those the statements which you prepared, Mr. Park?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. You are familiar with those statements?

A. Yes, sir.

Q. And have first-hand knowledge of them?

A. Yes, sir.

Q. State, if you please, Mr. Park, how many carloads of shipments are accounted for in this chest, which you have now identified as Exhibit 1-A, which was before the Interstate Commerce Commission?

306 Mr. Towner: Now, if your honor please, I have an objection to that. The objection is this: That this document was introduced in the hearings before the Commission; the Yards company made very strenuous objection to it on account of its incompetency, on the ground that it had not been properly proven, on the ground that the records upon which it was based were not records of the Yards Company, had not been produced, nor had they been identified by any witness who had knowledge of the facts. That objection before the Commission was overruled, and the fact that it was overruled forms one ground of attack which we propose to make upon the Commission's order. The witness is now asked to testify, upon the same faulty premise, to the same conclusion, that the Commission permitted him to testify in the hearings before it. We have the same objection to the evidence that was had before the Commission, namely, that the witness has no personal knowledge of the facts; that his evidence is based upon records which have not been proven, nor produced; that it is secondary evidence, and it is hearsay, and is not competent to bind my client.

Mr. McLaughlin: We object, on the further ground that the document itself has not yet been offered in evidence, and therefore it is improper to show the compilations or the result of the figures contained in that document until after the document has been offered in evidence.

Mr. Godman: The question I am asking the witness is merely to state whether he knows how many carloads of shipments were involved in this hearing before the Interstate Commerce Commission, where these plaintiffs were awarded a reparation, just the number of carloads, if he knows; he is the Traffic Manager there.

Mr. Towner: That question, however, your honor, if
307 that is what the question is, I thought it went further than that—

Mr. Godman: Then I will withdraw that and ask that question.

Mr. Towner: That does not cure the objection because the witness' knowledge of the facts, even as testified to by him, rests, as I say, upon an examination of the records of the multitudinous Commission men's records which have not been produced, either here or before the Commission, concerning which there is no testimony. Mr. Park might testify as to what these records show, but even if he did that it could have no legal effect in the absence of some identification and proof as to the correctness of the record. I therefore make the same objection upon the same grounds.

Mr. McLaughlin: And I join in it.

The Court: I will overrule the objection.

Mr. Towner: Exception.

The Court: He may answer.

Mr. Godman: You may state.

The Witness: A. 560005 cars.

Mr. Godman: Q. Did you compute the aggregate amount of the loadings and unloading service charge which was made on that number of carload shipments?

A. That is, I assume, Mr. Godman, you mean over and above the tariff amount?

Q. Yes, the excess charge.

A. In other words, the excess charges?

Q. Yes.

A. Yes, sir. That is 140—

Q. I asked you if you had computed them?

A. I have, yes, sir.

Q. State what they amounted to?

Mr. Towner: I object to the question on the same
308 ground that I objected to the previous question, namely, it is based upon the witness' knowledge, not shown to be based on evidence, not proven, not produced, secondary, hearsay, and not competent to bind my client.

The Court: Overruled.

Mr. Towner: Exception.

The Witness: A. $140,001.25.

* * * * * *

Mr. McLaughlin: Q. You did not deliver the document that is in this frame box to the Commission in February, 1921, did you?

A. I did turn over to the Commission a copy of it.

Q. I am not asking that; I will ask to strike out the answer.

Mr. Hillyer: You mean the original?

The Witness: That is what I mean by the copy, that is a copy of the original that was turned over to the Commission, was delivered to the Commission physically by me on February 25th, 1921.

The Court: These are not the identical documents that you turned over?

The Witness: No, sir, they are the carbon copies of the original documents.

Mr. McLaughlin: Q. You did not commence the performance of your duties until some time in 1919?

A. May 1st, 1919.

Q. And you had nothing to do with the handling of any of this stock, or the payment of any of these charges, did you, personally?

A. As a Traffic Manager, I had, and every one of these individual commission firms at the Yards, it was my duty to
309 watch the payment of their freight charges, to see that the correct amount was paid, and no more, and to see that they were paid, and therefore, Mr. McLaughlin, it was my duty to go into the Commission firms' offices from time to time, and go into all of them, and examine their original records over a period back two years prior to the time that I assumed the position of Traffic Manager of the Exchange, because of the fact it was possible to file overcharge claims, or make refunds to carriers for that period previous to the two years that I assumed this position, and therefore I want to say to you that I was intimately acquainted with the records in the Commission firms' offices.

Q. My question was you had nothing personal to do with the handling or paying of these carloads of stock?

A. If you assume that from the answers I have given you, you are wholly mistaken because I did have personal contact with them, yes sir.

Q. What did you do with reference to receiving any carloads of this stock?

(No response.)

Q. If you did have anything to do with receiving any carloads, tell the jury about it?

A. I have just stated that as Traffic Manager for these Commission firms it was my duty, and I did inspect their records.

Q. What did you do in the performance of your duty in receiving any carloads of stock. Take one thing at a time?

A. Checked their freight records, their payment of freight charges, to see that they were proper.

Q. That did not have anything to do with receiving carloads of stock?

A. I never unloaded any of the stock.

Q. You were not there to see it unloaded?

310 A. Yes, I have seen them unloaded, thousands and thousands of carloads of stock.

Q. But without paying particular attention to what Commission man's stock it was or what shipper's stock?

A. I would not say that, but I will say this, and it may suit your purpose, I have never kept a record of each car, say 77642, unloaded.

Q. That is not my purpose. You misconceived it entirely. I want to know whether or not what you are testifying to about is something you gleaned from looking at the records of Commission men, or in some other way?

A. It is taken from actual contact, in watching them unload stock, seeing how they unloaded, how they handled it, following the bills through the Stock Yard Company offices, through the joint agency offices, personally, into the Commission firms' offices, and there seeing them paid.

Q. How many of the bills did you so follow?

A. Oh, a very small percentage of the aggregate, necessarily.

Q. You did not follow this 540,005, did you?

A. 560,000 cars, no, sir.

Q. And you did not pay any of this money over, did you?

A. Not personally, no; I O. K.'d the payment of them.

Q. You did not see any of the money paid over, did you?
A. Yes, I saw the checks, and approved the payments of a great quantity of them.
Q. Great quantities of them?
A. Yes, sir.
Q. As a rule, doesn't the Commission man check the bill, and after getting the weight of the stock and making allowances for the fill, doesn't he put the weight to be charged as freight down on the bill and compute the amount of the freight rate, and then doesn't he pay that bill, and it comes back
311 to you, without consulting you, as a rule?
A. In a vast majority of cases he does that, but he consults me on a certain percentage of them.
Q. If he is in doubt about the matter, and needs expert advice, then he consults you?
A. That is about the situation.
Q. The routine is that the Commission man helps make out that bill by adding the correct weight and computing the amount of the freight that will be chargeable, and returns it to the Stock Yards Company or the railroad, and by and by that same document comes back to him, and he pays the bill by writing his check?
A. That is right.
Q. And you as a rule have nothing to do with it?
A. I would say I do have something to do with it, because I am charged with the responsibility of seeing that these payments are correct.
Q. Yes, but you do not see one in a thousand of them, do you?
A. Yes, I see one out of a thousand and more than that, but I don't know what percentage I see. I watch them in a general way, and see that the correct amount of the freight charges are paid.
Q. So that in a large measure, all of this information that you gathered together and put in this document you call Exhibit 1-A was material that you got looking at the bills and the records of the Commission men?
A. Yes, sir, and from their check stubs.
Q. And the check stubs?
A. Yes, sir, that is correct.
312 18. The District Court erred in admitting in evidence over the objection and exception of the plaintiffs paragraphs 12 to 25 inclusive of Defendants' Exhibit 1, being a stipulation of certain facts entered into between the plaintiffs

and defendants with the right reserved by all parties to object to the competency, materiality and relevancy of any of said stipulation, said paragraphs 12 to 25 being as follows:

(12) That prior to the said period of Federal control of railroads, R. N. Collyer, as the duly authorized and appointed agent of the line-haul carriers, engaged in the transportation of livestock between the said Union Stock Yards and points east of Chicago, Illinois, published his official Classification No. 44, providing general regulations, form of contract, and terms and conditions for said transportation by said line-haul carriers, which was duly filed with the Interstate Commerce Commission under I. C. C. O. C. No. 44 and became effective February 1, 1917.

(13) That at noon, December 28, 1917, the Director General of Railroads took over the lines of railroads of the said line-haul carriers which engaged in the transportation of livestock between the said Union Stock Yards and points east of Chicago, Illinois, and continued in effect the said Official Classification No. 44.

(14) That during the said period of Federal control of railroads the Director General of Railroads published two supplements to said Official Classification No. 44, which in
313 form and substance carried forward and continued in force during the said period of Federal control of railroads, except as hereinafter indicated, the general regulations, form of contract, and terms and conditions for the transportation of livestock between the said Union Stock Yards and points east of Chicago, Illinois, as contained in said Official Classification, which supplements were filed with the Interstate Commerce Commission under I. C. C. Nos. 20 and 29, and became effective January 1, 1918, and September 30, 1918, respectively.

(15) That copies of the pages of said Official Classification No. 44, viz., title page, and pages xxi, lxiii, lxiv, 1, 30, 48, 49, 220, 221, 222, 223, and 224; of title page and pages 3, 4 and 5 of said supplement No. 20 thereto; and of title page and pages 17, 18 and 19 of said Supplement No. 29 thereto, which have been duly certified by George B. McGinty, Secretary of the Interstate Commerce Commission, are attached hereto, made a part hereof, and numbered Exhibit 3.

(16) That prior to the said period of Federal control of railroads, R. C. Fyfe, as the duly authorized and appointed agent of the line-haul carriers, engaged in the transportation of livestock to the said Union Stock Yards from points west

of Chicago, Illinois, published his Western Classification No. 54 providing certain regulations and terms and conditions for the said transportation by said line-haul carriers, which was duly filed with the Interstate Commerce Commission under I. C. C. No. 12 and became effective September 1, 1916.

(17) That at noon December 28, 1917, the Director General of Railroads took over the lines of railroads engaged in the transportation of livestock to the said Union Stock
314 Yards from points west of Chicago, Illinois, and continued in effect the said Western Classification No. 54.

(18) That copies of the pages of said Western Classification No. 54, viz., title page and pages i, lix, and 249, which have been duly certified by George B. McGinty, Secretary of the Interstate Commerce Commission, are attached hereto, made a part hereof, and numbered Exhibit 4.

(19) That during the said period of Federal control of railroads the Director General of Railroads published Western Classification No. 55, and Supplement No. 1 thereto, which in form and substance carried forward and continued in force during the said period of Federal control of railroads, except as hereinafter indicated, certain regulations and terms and conditions for the transportation of livestock to the said Union Stock Yards from points west of Chicago, Illinois, as contained in Western Classification No. 54, which classification and Supplement No. 1 were duly filed with the Interstate Commerce Commission under I. C. C. No. 13 and Supplement No. 1, and became effective April 1, 1918, and April 20, 1918, respectively.

(20) That copies of the pages of said Western Classification No. 55, viz., title page and pages i, xiii, lxi, and 282; and of title page and pages 4 and 21 of said Supplement 1 thereto, which have been duly certified by George B. McGinty, Secretary of the Interstate Commerce Commission, are attached hereto, made a part hereof, and numbered Exhibit 5.

(21) That during the period of Federal control of railroads the Director General of Railroads published Consolidated Freight Classification No. 1, consolidating and superseding the aforementioned Official Classification No. 44,
315 and Western Classification No. 55, and contained in form and substance certain regulations, form of contract, and terms and conditions for the transportation of livestock between the said Union Stock Yards and points east of Chicago, Illinois, as contained in Official Classification No. 44; and also containing in form and substance certain regulations

and terms and conditions for the transportation of livestock to the said Union Stock Yards from points west of Chicago, Illinois, as contained in said Western Classification No. 55, which Freight Classification No. 1 was duly filed with the Interstate Commerce Commission under I. C. C.-O. C. No. 45 and I. C. C. No. 14, and became effective December 30, 1919, and continued in full force and effect during the remainder of said period of Federal control of railroads.

(22) That copies of the pages of said Consolidated Freight Classification No. 1, viz., title page and pages ii, xxxv, lxxxix, 47, 48, 246 and 250, which have been duly certified by George B. McGinty, Secretary of the Interstate Commerce Commission, are attached hereto, made a part hereof, and numbered Exhibit 6.

(23) That prior to the said period of Federal control of railroads, E. B. Boyd, as the duly authorized and appointed agent of the line-haul carriers engaged in the transportation of livestock between the said Union Stock Yards and points within the State of Illinois, published his Illinois Classification No. 10-B providing certain regulations and terms and conditions for said transportation by said line-haul carriers, which Illinois Classification was filed with the Interstate Commerce Commission under I. C. C. No. A-658, and became effective May 25, 1916.

316 (24) That at noon December 28, 1917, the Director General of Railroads took over the lines of railroads of said line-haul carriers which engaged in the transportation of livestock between the said Union Stock Yards and points within the State of Illinois, and continued in effect the said Illinois Classification I. C. C. No. A-658.

(25) That copies of the pages of said Illinois Classification I. C. C. No. A-658, viz., title page and pages iii, iv, and 5, which have been duly certified by George B. McGinty, Secretary of the Interstate Commerce Commission, are attached hereto, made a part hereof, and numbered Exhibit 7.

* * * * * *

Wherefore, the aforesaid plaintiffs-appellants pray that the judgment of the said District Court be reversed.

SIMS, GODMAN, STRANSKY & BREWER
Attorneys for Plaintiffs-Appellants.

282 And on, to wit, the 22nd day of September, 1930 come Filed Sep 1930.
Geo. J. Adams and A. W. Kitchen, co-partners trading as Adams & Kitchen, et al., as principal and Hartford Accident & Indemnity Company, a corporation, as surety, and filed in the Clerk's office of said Court, in said entitled cause, a certain Bond on Appeal in words and figures following, to wit:

283 Know All Men By These Presents, that we, Geo. J. Adams and A. W. Kitchen, copartners trading as Adams & Kitchen; John G. Adler and Alfred E. Adler, copartners trading as Adler Sons & Company; Alexander, Conover and Martin, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; John A. Babcock, an individual trading as John A. Babcock & Company; Fred L. Heyne and E. H. Baker, copartners trading as Baker, Heyne & Company; W. A. Peterson, trading as Bacon, Peterson & Company; Bowles Live Stock Commission Company, a corporation organized and existing under the laws of the State of West Virginia with its principal place of business at Chicago in the State of Illinois; E. C. Brown and Seth B. St. John, copartners trading as Brown-St. John Company; Thos. H. Brown; George M. Brownson and J. L. Ettlinger, copartners trading as Brownson & Ettlinger; Byers Brothers Company, a corporation organized and existing under the laws of the State of Missouri with its principal place of business at Chicago in the State of Illinois; Wm. B. Swiney, Chas. M. Swiney and Thos. E. Swiney, copartners trading as Swiney Bros., successors to Bunker & Swiney; J. B. Cahill, trading as J. B. Cahill & Company; Central Live Stock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Ernest Clark and Louis Armbrecht, copartners trading as Clark, Armbrecht & Company; E. A. Clark, trading as Clark, Bowles & Company; John Clay, John G. Forrest, C. A. Kleman, F. H. Connor and C. L. Robinson, copartners trading as Clay, Robinson & Company; James R. Clegg, an individual trading as James R. Clegg & Company; A. M. Henneberry and
284 N. W. Cochran, copartners trading as Cochran & Henneberry; W. P. Collings, trading as W. P. Collings & Son; Conklin Bros. Commission Company, a corporation organ-

ized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; H. D. Copeland & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; J. M. Corrick; J. F. Cross and H. G. Sommers, copartners trading as Cross, Sommers & Company; A. B. Daniels; P. T. Dolan and Fred Ludeman, copartners trading as Dolan & Ludeman; J. M. Doud & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; S. S. Driver, an individual trading as S. S. Driver & Company; Chas. R. Beason and P. E. Moore, copartners trading as Drovers Commission Company; J. W. Eastland, an individual trading as J. W. Eastland & Company; Guy Wheeler and T. K. Polley, copartners trading as Emmett, Wheeler & Polley; E. H. Kuenster, surviving partner of copartnership of Erwin & Kuenster; Evans, Snider, Buel Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Filler Wilson & McClelland, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; O. D. Freeland and C. M. Godfrey, copartners trading as Freeland & Godfrey; Fred Freeman, an individual trading as Fred Freeman & Company; P. J. Fitzgerald and G. S. Freeman, copartners trading as Freeman, Fitzgerald & Company; Wm. Gentleman, A. M. Gentleman, C. F. Gentleman and G. J. Gentleman, copartners trading as Wm. Gentleman & Sons; S. G. Gillogly, R. E.
Gillogly, F. D. Gillogly and F. T. Gillogly, copartners
285 trading as Gillogly & Company; Chas. E. Harding,
trading as Chas. E. Harding & Company; Hefner Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Geo. F. Hogan, trading as Geo. F. Hogan & Company; A. Warheimer, E. H. Ingwerson, J. H. Ingwerson, Dan R. Ingwerson, D. C. Mosier and A. C. Barroff, copartners trading as Ingwerson Bros.; Iowa Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; I. W. Knettle and Edwin Knettle, copartners trading as Knettle Bros.; Knollin Sheep Commission Company, a cor-

poration organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; E. H. Kuenster, an individual trading as Kuenster Livestock Commission Company; A. J. Laberthe; L. S. Larrison, an individual trading as L. S. Larrison and Company; Lee Live Stock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; F. C. Ludeman, an individual trading as F. C. Ludeman & Company; McCausland, Hoag & Vaughn, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Wm. Mahoney; J. P. Maley and Harry L. Carpenter, copartners trading as Maley, Carpenter & Company; John P. Martin, James G. Martin, George E. Martin and Wm. S. Burmister, copartners trading as Martin Bros. & Company; Miller White & Woods, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in
286 the State of Illinois; P. T. Dolan, trading as Miller & Dolan; Frank R. Mullen, trading as Mullen Commission Company; Robert S. Murray, trading as Murray & McDowell; B. F. Hubbird, trading as Minteer Hubbird & Company; National Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Northwestern Livestock Commission, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; G. W. Nixon, C. S. Horn and W. H. Chisholm, copartners trading as Nixon, Horn & Chisholm; North American Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Silas Palmer and W. H. Palmer, copartners trading as Silas Palmer & Son; T. B. Vincent and C. H. Boothroyd, copartners trading as Paris Commission Company; W. C. Patterson, trading as John Patterson & Son; W. A. Peterson and Wm. Turnbull, copartners trading as Peterson, Turnbull & Company; J. H. Piatt, trading as Abner Piatt & Company; Thos. K. Polley, trading as Thos. K. Polley & Company; R. H. Pritchard, trading as Pritchard Commission Company; Chas. R. Rice and Oscar A. Rice, copartners trading as Rice Bros.; J. B. Roach and W. P. Roach, co-

partners trading as Roach Livestock Commission Company; Rosenbaum Brothers & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; F. W. Sheldon trading as F. W. Sheldon & Company; W. Harry Sherwood and Russell H. Sherwood, copartners trading as Sherwood & Son; J. Paul Shinn, Chas. H.
287 Moberly and I. O. Fry, copartners trading as Shinn, Fry & Moberly, successors to Shinn Fry & Company; James G. Shutter; W. R. Smith, J. C. Eastes and John Smith, copartners trading as W. R. Smith & Son; T. B. Stafford and A. B. Stafford, copartners trading as Stafford Bros.; Standard Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; A. F. Starrett, Jr., O. A. Mathison, A. C. Granger and M. E. Peschong, copartners trading as Starrett, Mathison & Company; Chas. H. Stephens and J. A. Goble, copartners trading as Stephens & Goble; A. F. Stewart, trading as A. F. Stewart & Company; J. E. Strader and J. L. Strader, copartners trading as Strader Bros.; J. J. Sullivan and J. C. Sullivan, copartners trading as Sullivan Commission Company; A. Gilmore, C. L. Swanson and C. J. Castenholz, copartners trading as Swanson, Gilmore and Castenholz; Harry Thompson and C. W. Ball, copartners trading as Thompson & Ball; Thos. Tipton, E. M. Steck and W. P. Herrick, copartners trading as Tipton, Steck & Herrick; D. L. Trout and F. L. Trout, copartners trading as Trout Livestock Commission Company; G. B. Van Norman, an individual trading as G. B. Van Norman & Company; Van Norman Lawler & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; W. H. Walter, trading as Walter Bros.; A. A. Walters, C. A. Dunbar and J. H. Dunbar, copartners trading as Walter & Dunbar; L. B. Werden; W. W. Wilson and Chas. A. Wilson, copartners trading as W. W. Wilson & Company; Jet Wimp, trading as Jet Wimp & Company; Kay Wood and Chas. A. Wood, copartners trading as Wood Bros.; Curtis A. Wood and Walter R. Wood, copartners trading as Curtis A. Wood & Company; L. B. Yancey, and W. E. Young, trading as W. E.
288 Young & Company, as principals, and Hartford Accident and Indemnity Company, a corporation, as surety, are held and firmly bound unto The Union Stock Yard & Transit

Company, a corporation, and Andrew W. Mellon, Director General of Railroads, as agent for the following corporations: The Atchison, Topeka & Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Chesapeake and Ohio Railway Company of Indiana; The Chicago and Alton Railroad Company; Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago Junction Railway Company; Chicago, Milwaukee and St. Paul Railway Company, and H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers; The Chicago, Rock Island and Pacific Railway Company; Chicago, Terre Haute & Southeastern Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Grand Trunk Western Railway Company; Illinois Central Railroad Company; Indiana Harbor Belt Railroad Company; The Michigan Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; New York Central Railroad Company; New York, Chicago & St. Louis Railroad Company; The Pennsylvania Railroad Company; Pere Marquette Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and Harry A. Dunn, Receivers, and Wabash Railway Company, their attorneys, executors, administrators or assigns, in the penal sum of Five Hundred Dollars ($500.00), to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly, severally and firmly by these presents.

289 Sealed with our seals and dated this 22nd day of September in the year of Our Lord one thousand nine hundred thirty.

Whereas, lately at a session of the District Court of the United States for the Northern District of Illinois, in a suit pending in said court between the first named principals as plaintiffs and the above-named obligees as defendants, a judgment for costs and in bar of action was rendered against the said above-named principals and the said above-named principals have obtained from said court an order allowing an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, and have filed a copy thereof in the

Clerk's office of said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said above-named obligees citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit to be holden at Chicago in the State of Illinois.

Now, The Condition Of The Above Obligation Is Such, that if the said above-named principals shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

W. W. Wilson & Co. (Seal)
By Chas. A. Wilson
Trout Live Stock Com. Co.
H. S. Trout *co-partner* (Seal)
Starrett, Mathison & Co.
per M. E. Ceschong (Seal)
Baker, Heyne & Co.
by Fred L. Heyne (Seal)
Gillogby & Company
by R. E. Gilloghy (Seal)
290 Thompson & Ball (Seal)
By H. E. Thompson (Seal)
Clark, Armbrecht & Co.
By Louis Armbrecht & Co. (Seal)
Mullen Com. Co.
By Frank R. Mullen (Seal)
Dolan & Ludeman
By P. T. Dolan (Seal)
Wm. Gentleman & Sons
By Wm. Gentlemen (Seal)
Swiney Brothers
By T. E. Swiney (Seal)
Stafford Bros.
By A. B. Stafford (Seal)
Martin Bros & Co.
By Geo. E. Martin (Seal)
Drovers Com. Co.
By P. E. Moore (Seal)
Walters & Dunbar
By J. H. Dunbar (Seal)
Clark, Bowles & Co.
By E. A. Clark (Seal)

SWANSON, GILMORE & CASTENHOLZ
By A. GILMORE (Seal)
MINTEER HUBBIRD & Co.
By B. F. HUBBIRD (Seal)
COCHRAN & HENNEBERRY
By A. M. HENNEBERRY (Seal)
JOHN A. BABCOCH & Co.
By JOHN A. BABCOCK (Seal)
RICE BROS.
By CHAS. R. RICE (Seal)
ERWIN & KUENSTER
By E. H. KUENSTER (Seal)
ROACH LIVESTOCK COM. Co.
By W. P. ROACH (Seal)
JET WIMP & Co.
By JET WIMP (Seal)
EMMETT, WHEELER & POLLEY
By T. K. POLLEY (Seal)
291
BROWNSON & ETTLINGER
By J. L. ETTLINGER (Seal)
(Seal)
ROSENBAUM BROS. & Co.
By A. MATHINSON
Pr. (Seal)
D. C. MOSIE
Sec.
BYERS BROS. Co.
By B. M. BYERS
Pres. (Seal)
By F. A. EMERY
V. Pr.
STRADER BROS.
By J. E. STRADER (Seal)
JOHN PATTERSON & SON
By W. C. PATTERSON (Seal)
SILAS PALMER & SON
By W. H. PALMER (Seal)
MALEY, CARPENTER & Co.
By HARRY L. CARPENTER (Seal)
BACON, PETERSON & Co.
By W. A. PETERSON (Seal)
PETERSON, TURNBULL & Co.
By W. A. PETERSON (Seal)
(Seal)
FRED FREEMAN & Co.
By FRED FREEMAN (Seal)

JAMES W. EASTLAND & Co.
By JAMES W. EASTLAND (Seal)
ALEXANDER, CONOVER & Co.
By J. W. CONOVER
Pres. (Seal)
GEORGE G. CONOVER
Treas. (Seal)
(Seal) ADLER SONS & Co. (Seal)
By JOHN G. ADLER (Seal)
HARTFORD ACCIDENT AND
INDEMNITY COMPANY (Seal)
By WARD W. HILTON
Attorney-in-fact (Seal)

Ins. Co. O. K.
CHRIS H. GUENTHER
Deputy

Approved:
CHARLES E. WOODWARD
District Judge

22. 292 And afterwards, to wit, on the 22nd day of September 1930, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward District Judge, appears the following entry, to wit:

293 * * (Caption) * *

Monday, September 22, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

This day come the plaintiffs by their attorneys and present herein the plaintiffs' cost bond which bond is approved and signed by the Court and ordered by the Court to be filed by the Clerk of this Court.

317 And afterwards, to wit, on the 22nd day of October, 1930, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

318 • • (Caption) • • Enter 193

Monday, September 22, 1930.

Present: Honorable Charles E. Woodward, Judge of said Court.

On motion of plaintiffs' attorney It Is Ordered that the time for docketing the appeal in the Circuit Court of Appeals be and the same is hereby extended to October 31, A. D. 1930.

604 • • (Caption) • • Filed 193

NOTICE.

To: Winston Strawn & Shaw,
38 South Dearborn Street,
Chicago, Illinois,
Attorneys for Union Stock Yard & Transit Company.
and
Edgar R. Hart,
1422-400 West Madison Street,
Chicago, Illinois,
Attorney for Director General of Railroads.

Please take notice that on Tuesday, October 14, 1930, we will file in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, the plaintiffs' amended praecipe for transcript of record in the above-entitled cause, a copy of said amended praecipe being herewith served upon you.

SIMS, GODMAN, STRANSKY & BREWER
Attorneys for Plaintiffs.

Received copy of the foregoing notice and amended praecipe for transcript of record this 14th day of October, A. D.
605 1930.

WINSTON, STRAWN & SHAW
Attorneys for Union Stock Yard & Transit Company.

EDGAR R. HART
by M. CARMODY
Attorney for Director General of Railroads.

606 • • (Caption) • •

AMENDED PRAECIPE FOR TRANSCRIPT OF RECORD.

To: Charles M. Bates, Esq.,
Clerk of said District Court.

In lieu of the plaintiffs' original praecipe heretofore filed herein you will please prepare a true and complete transcript of record in the above-entitled cause, to be filed with the Clerk of the United States Circuit Court of Appeals for the Seventh Judicial Circuit in accordance with the appeal granted to the plaintiffs herein and on behalf of said plaintiffs, and include therein the following and none other:

1. Placita.
2. Praecipe.
3. Security for costs.
4. Plaintiffs petition and exhibits A, B, C, D, and E attached thereto.
5. Appearance of Andrew W. Mellon, Director General of Railroads.
6. Appearance of Union Stock Yard & Transit Company.
7. Answer of Union Stock Yard & Transit Company.

607 8. Answer of Andrew W. Mellon, Director General of Railroads.

9. All orders of continuance.
10. Order impaneling the jury.
11. Motion of Andrew W. Mellon, Director General of Railroads, for directed verdict.
12. Motion of Union Stock Yard & Transit Company for directed verdict.
13. Opinion of Judge Woodward, January 28, 1930.
14. Order allowing motion for a directed verdict of Andrew W. Mellon, Director General of Railroads and exceptions thereto, January 28, 1930.
15. Order allowing motion for a directed verdict of Union Stock Yard & Transit Company and exceptions thereto, January 28, 1930.
16. Verdict of the jury, January 28, 1930, and exceptions thereto.
17. Motion of plaintiffs for new trial, order overruling same, and exception thereto, January 28, 1930.

18. Motion of plaintiffs in arrest of judgment, order overruling same, and exception thereto, January 28, 1930.
19. Judgment.
20. Petition for appeal and order of January 28, 1930 allowing appeal.
21. Motion of plaintiffs filed January 31, 1930 to vacate orders of January 28, 1930 overruling motion for new trial and motion in arrest of judgment, and affidavits in support thereof, and order of January 31, 1930 setting same.
22. Reasons assigned by plaintiffs in support of motion to vacate and set aside orders entered January 28, 1930, and motion to amend plaintiffs petition and amendment to plaintiffs petition all filed April 11, 1930.
23. Memorandum opinion of Judge Woodward filed July 31, 1930.
608 24. Order of July 31, 1930 overruling motion to vacate and set aside orders of January 28, 1930 overruling motion for new trial and motion in arrest of judgment and exception thereto by plaintiffs, order overruling motion to amend original petition exception thereto by plaintiffs, and extending time for filing bill of exceptions and appeal bond.
25. Order of August 28, 1930 amending order of July 31, 1930 allowing appeal and fixing time for bond and bill of exceptions.
26. Appeal bond.
27. Order of court approving appeal bond.
28. Bill of exceptions and order approving bill of exceptions.
29. Assignment of errors.
30. Citation.
31. Notice and Amended Praecipe for record.
32. Motion and order transmitting all original exhibits to Circuit Court of Appeals.
33. Order enlarging time for presenting, settling signing and filing bill of exceptions.
34. Order enlarging time for docketing appeal in Circuit Court of Appeals for the Seventh Circuit.

SIMS, GODMAN, STRANSKY & BREWER
Attorneys for Plaintiffs.

609 Northern District of Illinois, } ss:
Eastern Division, }

I, Charles M. Bates, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled George J. Adams and A. W. Kitchen, copartners trading as Adams & Kitchen, et al vs. Andrew W. Mellon, Director General of Railroads, as Agent, et al No. 37517 as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 30th day of October, A. D. 1930.

CHARLES M. BATES,
Clerk.

(Seal)

610 United States of America, } ss:

The President of the United States

To The Union Stock Yard & Transit Company, a corporation, and Andrew W. Mellon, Director General of Railroads, as agent for the following corporations: The Atchison, Topeka & Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Chesapeake and Ohio Railway Company of Indiana; The Chicago and Alton Railroad Company; Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago Junction Railway Company; Chicago, Milwaukee and St. Paul Railway Company, and H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers; The Chicago, Rock Island and Pacific Railway Company; Chicago, Terre Haute & Southeastern Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; Grand Trunk

Western Railway Company; Illinois Central Railroad Company; Indiana Harbor Belt Railroad Company; The Michigan Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; New York Central Railroad Company; New York, Chicago & St. Louis Railroad Company; The Pennsylvania Railroad Company; Pere Marquette Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Toledo, St. Louis & Western Railroad Company, and J. Frank Johnson and Harry A. Dunn, Receivers, and Wabash Railway Company,

Greeting:

You are hereby cited and admonished to be and appear 611 at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Geo. J. Adams and A. W. Kitchen, copartners trading as Adams & Kitchen; John G. Adler and Alfred E. Adler, copartners trading as Adler Sons & Company; Alexander, Conover and Martin, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; John A. Babcock, an individual trading as John A. Babcock & Company; Fred L. Heyne and E. H. Baker, copartners trading as Baker, Heyne & Company; W. A. Peterson, trading as Bacon, Peterson & Company; Bowles Live Stock Commission Company, a corporation organized and existing under the laws of the State of West Virginia with its principal place of business at Chicago in the State of Illinois; E. C. Brown and Seth B. St. John, copartners trading as Brown-St. John Company; Thos. H. Brown; George M. Brownson and J. L. Ettlinger, copartners trading as Brownson & Ettlinger; Byers Brothers Company, a corporation organized and existing under the laws of the State of Missouri with its principal place of business at Chicago in the State of Illinois; Wm. B. Swiney, Chas. M. Swiney and Thos. E. Swiney, copartners trading as Swiney Bros., successors to Bunker & Swiney; J. B. Cahill, trading as J. B. Cahill & Company; Central Live Stock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Ernest Clark and Louis Armbrecht, copartners trading as Clark, Armbrecht &

Company; E. A. Clark, trading as Clark, Bowles & Company; John Clay, John G. Forrest, C. A. Kleman, F. H.
612 Connor and C. L. Robinson, copartners trading as Clay, Robinson & Company; James R. Clegg, an individual trading as James R. Clegg & Company; A. M. Henneberry and N. W. Cochran, copartners trading as Cochran & Henneberry; W. P. Collings, trading as W. P. Collings & Son; Conklin Bros. Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; H. D. Copeland & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; J. M. Corrick; J. F. Cross and H. G. Sommers, copartners trading as Cross, Sommers & Company; A. B. Daniels; P. T. Dolan and Fred Ludeman, copartners trading as Dolan & Ludeman; J. M. Doud & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; S. S. Driver, an individual trading as S. S. Driver & Company; Chas. R. Beason and P. E. Moroe, copartners trading as Drovers Commission Company; J. W. Eastland, an individual trading as J. W. Eastland & Company; Guy Wheeler and T. K. Polley, copartners trading as Emmett, Wheeler & Polley; E. H. Kuenster, surviving partner of copartnership of Erwin & Kuenster; Evans, Snider, Buel Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Filler Wilson & McClelland, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; O. D. Freeland and C. M. Godfrey, copartners trading as Freeland & Godfred; Fred Freeman, an individual trading as Fred Freeman & Company; P. J. Fitzgerald and G. S. Freeman, copartners trading as Freeman, Fitzgerald &
613 Company; Wm. Gentleman, A. M. Gentleman, C. F. Gentleman and G. J. Gentleman, copartners trading as Wm. Gentleman & Sons; S. G. Gillogly, R. E. Gillogly, F. D. Gillogly and F. T. Gillogly, copartners trading as Gillogly & Company; Chas. E. Harding, trading as Chas. E. Harding & Company; Hefner Commision Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Geo. F. Hogan, trading as Geo. F. Hogan & Company;

A. Warheimer, E. H. Ingwerson, J. H. Ingwerson, Dan R. Ingwerson, D. C. Mosier and A. C. Barroff, copartners trading as Ingwerson Bros.; Iowa Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; I. W. Knettle and Edwin Knettle, copartners trading as Knettle Bros.; Knollin Sheep Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; E. H. Kuenster, an individual trading as Kuenster Livestock Commission Company; A. J. Laberthe; L. S. Larrison, an individual trading as L. S. Larrison and Company; Lee Live Stock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; F. C. Ludeman, an individual trading as F. C. Ludeman & Company; McCausland, Hoag & Vaughn, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Wm. Mahoney; J. P. Maley and Harry L. Carpenter, copartners trading as Maley, Carpenter & Company; John P. Martin, James G. Martin, George E. Martin and Wm. S. Burmister, copart-
614 ners trading as Martin Bros. & Company; Miller White & Woods, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; P. T. Dolan, trading as Miller & Dolan; Frank R. Mullen, trading as Mullen Commission Company; Robert S. Murray, trading as Murray & McDowell; B. F. Hubbird, trading as Minteer Hubbird & Company; National Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Northwestern Livestock Commission, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois, G. W. Nixon, C. S. Horn and W. H. Chisholm, copartners trading as Nixon, Horn & Chisholm; North American Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Silas Palmer and W. H. Palmer, copartners trading as Silas Palmer & Son; T. B. Vincent and C. H. Boothroyd, copart-

ners trading as Paris Commission Company; W. C. Patterson, trading as John Patterson & Son; W. A. Peterson and Wm. Turnbull, copartners trading as Peterson, Turnbull & Company; J. H. Piatt, trading as Abner Piatt & Company; Thos. K. Polley, trading as Thos. K. Polley & Company; R. H. Pritchard, trading as Pritchard Commission Company; Chas. R. Rice and Oscar A. Rice, copartners trading as Rice Bros.; J. B. Roach and W. P. Roach, copartners trading as Roach Livestock Commission Company; Rosenbaum Brothers & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; F. W. Sheldon trading as F. W. Sheldon & Company; W. Harry Sherwood and Russell H. Sherwood, copartners trading as Sherwood & Son;
615 J. Paul Shinn, Chas. H. Moberly and I. O. Fry, copartners trading as Shinn, Fry & Moberly, successors to Shinn Fry & Company; James G. Shutter; W. R. Smith, J. C. Eastes and John Smith, copartners trading as W. R. Smith & Son; T. B. Stafford and A. B. Stafford, copartners trading as Stafford Bros.; Standard Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; A. F. Starrett, Jr., O. A. Mathison, A. C. Granger and M. E. Peschong, copartners trading as Starrett, Mathison & Company; Chas H. Stephens and J. A. Goble, copartners trading as Stephens & Goble; A. F. Stewart, trading as A. F. Stewart & Company; J. E. Strader and J. L. Strader, copartners trading as Strader Bros.; J. J. Sullivan and J. C. Sullivan, copartners trading as Sullivan Commission Company; A. Gilmore, C. L. Swanson and C. J. Castenholz, copartners trading as Swanson, Gilmore and Castenholz; Harry Thompson and C. N. Ball, copartners trading as Thompson & Ball; Thos. Tipton, E. M. Steck and W. P. Herrick, copartners trading as Tipton, Steck & Herrick; D. L. Trout and F. L. Trout, copartners trading as Trout Livestock Commission Company; G. B. Van Norman, an individual trading as G. B. Van Norman & Company; Van Norman Lawler & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; W. H. Walter, trading as Walter Bros.; A. A. Walters, C. A. Dunbar and J. H. Dunbar, copartners trading as Walter & Dunzar; L. B. Werden; W. W. Wilson and Chas. A. Wilson, copartners trading as W. W. Wilson & Company;

Jet Wimp, trading as Jet Wimp & Company; Kay Wood and Chas. A. Wood, copartners trading as Wood Bros.; Curtis A. Wood and Walter R. Wood, copartners trading as Curtis A. Wood & Company; L. B. Yancey; and W. E. Young, trad-
616 ing as W. E. Young & Company, are plaintiffs-appellants and you are defendants-appellees, to show cause, if any there be, why the judgment rendered against the said plaintiffs-appellants as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles E. Woodward, Judge of the District Court of the United States, this 22d day of September, in the year of our Lord one thousand nine hundred and thirty.

CHARLES E. WOODWARD
District Judge.

617 On this ..... day of September, in the year of our Lord one thousand nine hundred and thirty, personally appeared .....
before me, the subscriber, ...
and makes oath that he delivered a true copy of the within citation to .....
Sworn to and subscribed the ..... day of September, A. D. 1930.

.....

Service of the within citation and receipt of copy thereof admitted this 24th day of September, 1930.

WINSTON, STRAWN & SHAW
Attorneys for The Union Stock Yard & Transit Company, Defendant-Appellee.

Service of the within citation and receipt of copy thereof admitted this 24th day of September, 1930.

EDGAR R. HART
Attorney for Andrew W. Mellon, Director General of Railroads, as Agent, Defendant-Appellee.

618 (Endorsed) * * (Caption) * * Citation Filed Sep 25 1930 Charles M. Bates, Clerk. Sims Godman Stransky & Brewer, Attorneys at Law, 1351 Continental Illinois Bank Building, Chicago, Ill. Telephone Central 4384.

Nov. 10,

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 4462 October Term, 1930.

George J. Adams and A. W. Kitchen, copartners trading as Adams & Kitchen, *et al.*,
Appellants,

vs.

Union Stock Yard and Transit Company and Andrew W. Mellon, Director General of Railroads, as Agent, *et al.*,
Appellees.

STIPULATION.

It appearing that in the transcript of record in the above case the exhibits of the appellants, the plaintiffs below, appear in two places, to-wit, Exhibits A, B, C, D, E, and F are attached to the original petition filed in said case and appear in said transcript as a part of the common-law record, and also the same exhibits were offered and received in evidence and appear in the bill of exceptions as plaintiffs' Exhibits Nos. 1, 2, 3, 4, 5 and 6;

It Is Therefore Stipulated and Agreed by and between the parties hereto, by their respective counsel, that the Clerk of the United States Circuit Court of Appeals in printing the transcript of record shall omit from the common-law record plaintiffs' Exhibits A, B, C, D, E and F but shall print as a part of the bill of exceptions the same exhibits which appear therein as plaintiffs' Exhibits Nos. 1, 2, 3, 4, 5 and 6, and wherever said exhibits appear in the common-law record that in lieu of printing them they shall be appropriately referred to.

FRANKLIN J. STRANSKY;
CLAIR R. HILLYER and
JAMES P. CAREY, JR.
Counsel for Appellants.
WINSTON, STRAWN & SHAW
Counsel for Appellee Union Stock Yard and Transit Company.
A. A. MCLAUGHLIN
Counsel for Appellee Andrew W. Mellon, Director General of Railroads, as Agent.

(Filed November 10, 1930.)

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 378, inclusive, contain a true copy of the Printed Record, printed under my supervision and filed in the seventeenth day of January, 1931, and which, together with the original exhibits in this cause, certified herewith, constitute the record on which the following entitled cause was heard and determined:

George J. Adams and A. W. Kitchen, Co-partners Trading as Adams & Kitchen, *et al.*,

Appellants,

vs.

Andrew W. Mellon, Director General of Railroads, as Agent, The Union Stock Yard & Transit Company, *et al.*,

Appellees,

No. 4462, October Term, 1930, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 16th day of November, A. D. 1931.

(Seal)

FREDERICK G. CAMPBELL
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the City of Chicago in said Seventh Circuit on the seventh day of October, 1930, of the October Term in the year of our Lord one thousand nine hundred and thirty, and of our Independence the one hundred and fifty-fifth.

And afterwards, to wit: On the thirty-first day of October, 1930, there was filed in the office of the clerk of this Court, a Certificate to Exhibits, which said Certificate to Exhibits is in the words and figures following, to wit:

United States of America
Northern District of Illinois } ss.
Eastern Division

I, Charles M. Bates, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify that I herewith transmit to the United States Circuit Court of Appeals for the Seventh Circuit, certain original exhibits in the case entitled Adams & Kitchen, et al. vs. Andrew W. Mellon, Director General of Railroads, as Agent, et al., No. 37517, said exhibits are marked as follows, to wit:

Defendant's Exhibits: 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45.

In Testimony Whereof: I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, this 30th day of October, 1930.

CHARLES M. BATES,
Clerk.

(Seal)

Endorsed: Filed Oct. 31, 1930. Edward M. Holloway, Clerk.

And on the same day, to wit: On the thirty-first day of October, 1931 there was filed in the office of the clerk of this Court an appearance of counsel for appellants, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 4462 October Term, 1930.

George J. Adams and A. W. Kitchen, Co-partners trading as Adams & Kitchen, *et al.*

Appellants,

vs.

Andrew W. Mellon, Director General of Railroads, as Agent, The Union Stock Yards & Transit Company, *et al.*

Appellee.

The clerk will please enter our appearance as counsel for the appellants.

FRANKLIN J. STRANSKY
CLAIR R. HILLYER
JAMES P. CAREY, JR.
#1351, 230 South Clark Street,
Chicago, Illinois.

Endorsed: Filed Oct. 31, 1930. Edward M. Holloway, Clerk.

And afterwards, to wit: On the fourth day of November, 1930, there was filed in the office of the clerk of this Court an appearance of counsel for Appellee, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 4462 October Term, 1930.

George J. Adams & A. W. Kitchen, Co-partners, etc.
Appellants.

vs.

Andrew W. Mellon, Director General of Railroads, *et al.*
Appellees.

The clerk will enter my appearance as counsel for the Appellee; A. W. Mellon, Director General.

A. A. McLAUGHLIN
No. 1115—Bankers Trust Bldg.
Des Moines, Iowa.

EDGAR R. HART
R. 1422—400 W. Madison St.
Chicago. Ill.

Endorsed: Filed Nov. 4, 1930. Edward M. Holloway, Clerk.

And on the same day, to wit: On the fourth day of November, 1930, there was filed in the office of the clerk of this Court an appearance of counsel for Appellee, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 4462. October Term, 1930.

George J. Adams & A. W. Kitchen, Co-partners, etc.
Appellants.

vs.

Andrew W. Mellon, Director General of Railroads, *et al.*
Appellee.

The clerk will enter my appearance as counsel for the Aplee, Union Stock Yards & Transit Company.

SILAS H. STRAWN
RALPH M. SHAW
FRANK N. TOWNER
38 So. Dearborn Street
Chicago, Ill.

Endorsed: Filed Nov. 4, 1930. Edward M. Holloway, Clerk.

And afterwards, to wit: On the tenth day of November, 1930, there was filed in the office of the clerk of this Court a Stipulation re: printing transcript of record, which said Stipulation is not copied here as the same appears on page 378 of the Printed Record in this cause, certified herewith.

And afterwards, to wit: On the twenty-fourth day of January, 1931, there was filed in the office of the clerk of this Court an appearance of counsel for Appellee, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 4462. October Term, 1930.

George J. Adams, *et al.*

vs.

A. W. Mellon, Director General, *et al.*

The clerk will enter my appearance as counsel for the Andrew W. Mellon, Director General of Railroads, as Agent.

SIDNEY F. ANDREWS
Hurley-Wright Building
Washington, D. C.

Endorsed: Filed Jan. 24, 1931. Edward M. Halloway, Clerk.

And afterwards, to wit: On the twenty-third day of March, 1931, there was filed in the office of the Clerk of this Court a Stipulation as to date of hearing, which said Stipulation is in the wards and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, A. D. 1930.

George J. Adams & A. W. Kitchen, Co-partners trading as Adams & Kitchen, *et al.*,
Appellants,
vs.
Andrew W. Mellon, Director General of Railroads, etc., *et al.*,
Appellees.
No. 4462.

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto, by their counsel, that the Court may set the above entitled cause for argument on Thursday, May 7, 1931.

SIMS STRANSKY BREWER & POUST
C. R. HILLYER
Attorneys for Appellants.

SIDNEY F. ANDREWS
A. A. McLAUGHLIN
Attorneys for Appellee, Andrew W. Mellon, Director General of Railroads, etc.

SILAS H. STRAWN
RALPH M. SHAW
FRANK N. TOWNER
Attorneys for Appellee Union Stock Yard & Tranit Company of Chicago.

Endorsed: Filed March 23, 1931. Edward M. Holloway, Clerk.

And on the same day, to wit: On the twenty-third day of March, 1931, the following further proceedings were had and entered of record, to wit:

Monday, March 23, 1931.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding
Hon. Evan A. Evans, Circuit Judge
Hon. William M. Sparks, Circuit Judge
Edward M. Holloway, Clerk
Henry C. W. Laubenheimer, Marshal

Before:

Hon. Samuel Alschuler, Circuit Judge

4462	George J. Adams, *et al.* *vs.* Andrew W. Mellon, Director General of Railroads, *et al.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Pursuant to stipulation of counsel, it is now here ordered that this cause be, and the same is hereby set down for hearing on Thursday, May 7, 1931.

And afterwards, to wit: On the fourteenth day of May, 1931, the following further proceedings were had and entered of record, to wit:

Thursday, May 14, 1931.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding
Hon. Evan A. Evans, Circuit Judge
Hon. William M. Sparks, Circuit Judge
Hon. Walter C. Lindley, District Judge
Edward M. Holloway, Clerk
Henry C. W. Laubenheimer, Marshal

Before:

Hon. Samuel Alschuler, Circuit Judge
Hon. William M. Sparks, Circuit Judge
Hon. Walter C. Lindley, District Judge

George J. Adams, *et al.*
4462 *vs.*
Andrew W. Mellon, Director General of Railroads, as Agent, *et al.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Franklin J. Stransky, counsel for appellants, and by Mr. Sidney F. Andrews and Mr. A. A. McLaughlin, counsel for appellee Andrew W. Mellon, Director General of Railroads, as Agent, and by Mr. Frank H. Towner for appellee, Union Stock Yard and Transit Company.

And afterwards, to wit: On the twenty-seventh day of July, 1931, there was filed in the office of the clerk of this Court, the Opinion of the Court, which said Opnion is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 4462. October Term, 1930, April Session, 1931.

George J. Adams & A. W. Kitchen, Copartners trading as Adams & Kitchen, *et al.*, *Appellants*, *vs.* Andrew W. Mellon, Director General of Railroads, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

July 27, 1931.

Before ALSCHULER, and SPARKS, *Circuit Judges*, and LINDLEY, *District Judge*.

ALSCHULER, *Circuit Judge*. The appeal is from a judgment of the District Court given in an action there brought to enforce an order for reparation awarded by the Interstate Commerce Commission against the Director General of Railroads and the United Stock Yard & Transit Co. in the sum of $140,001.25, with interest and attorneys' fees. The order for reparation was based on the collection of a charge of 25 cents per car for loading and unloading live stock at the Union Stock Yard in Chicago during the period of Federal control of the railroads. At the close of all the evidence the court, upon motions of defendants, directed the jury to return a verdict for defendants.

The Stock Yard Company was organized in 1865 to construct and operate stock yards, and railway tracks connecting the yards with the several railroads entering Chicago. Its capital stock was then held by or in the interest of the line-haul railroads. In 1867 the Stock Yard Co. established a charge of 50 cents for loading and 25 cents for unloading each car of live stock, which charge was assumed and paid by the

several line-haul railroads. The railroads moved the cars with their own power over the tracks of the Stock Yard Co. to its unloading platforms, and the stock was unloaded by the Stock Yard employes.

In 1894 the Stock Yard Co.'s tracks were transferred to the Chicago Junction Railway Co. A through tariff was then published by the railroads, which included a switching charge of $2 for each car moved between the termini of the railroads and the stock yard. Out of this charge grew a controversy as to whether the Stock Yard Co. was a common carrier engaged in interstate commerce, and subject to the provisions of the Act to Regulate Commerce. The Commission determined that it was such a common carrier. The controversy reached the Supreme Court on an appeal from the United States Commerce Court, and in 1912 the Supreme Court decided that the Stock Yard Co. was a common carrier engaged in interstate commerce, and subject to the provisions of the act. *United States, etc.* v. *Union Stock Yard & Transit Co.*, 226 U. S. 286.

The Stock Yard Co. thereupon duly published its tariff, fixing the charge of 50 cents for loading and 25 cents for unloading each car, and the line-haul railways, in their published tariffs, absorbed these charges in the stated amount of 50 cents for loading and 25 cets for unloading each car, the absorbing words of the tariffs being:

> "Carriers as Shown Will Pay the Union Stock Yards & Transit Co.'s Charges as Follows:
>
> In Cents Per Car—Loading Charges 50
> Unloading Charges 25"

The Stock Yard Co. filed with the I. C. C., effective May 21, 1917, a tariff increasing these loading and unloading charges by 25 cents per car, which increase the line-haul carriers declined to absorb. The railroads did not amend their tariffs, but the charge of 25 cents increase per car was endorsed on the freight bills, and paid by the yards commission merchants—to whom the shipments were consigned—and ultimately received by the Stock Yard Co. When the railroads passed into Federal control (December 28, 1917) the Director General of Railroads likewise declined to absorb the 25 cents per car increase, and without publication of any further tariff the additional 25 cents per car continued to be collected and paid as before.

The Stock Yard Co., contending that by reason of certain

changes in its relation with the Chicago Junction Railway Co. it was no longer a common carrier of interstate commerce, filed with the I. C. C. its tariff, effective September 1, 1917, cancelling its previously filed loading and unloading tariff charge. The Commission suspended the effectiveness of the notice of cancellation from time to time until the expiration of Government control, so that it never became effective. The suspension of the cancellation left in force the last previously published tariff, which had increased the loading and unloading charge by 25 cents per car.

November 17, 1917, the Chicago Live Stock Exchange, composed of commission merchants at the Chicago stock yard, filed complaint with the I. C. C. against the Stock Yard Co. and the line-haul carriers, against the 25 cents loading and unloading increase, and charged that its collection violated sections 1 and 3 of the Interstate Commerce Act. This complaint was consolidated with the controversy respecting cancellation of the 25 cents per car increase, and the matters were heard by the Commission.

Respecting the complaint of the Chicago Live Stock Exchange, its demand for cessation of the increased unloading charge and for reparation involved the question of whose duty it was to load and unload the live stock at the Chicago yard. The proposition was discussed in the Commission's report and opinion (52 I. C. C. 209, February 11, 1919), and the conclusion was announced that: "3. The loading and unloading of live stock, in carloads, at the Chicago stockyards is a duty of the shipper."

March 31, 1919, the Exchange filed a petition for rehearing, and the Commission reopened the case, then, for the first time, naming the Director General of Railroads as a respondent. There was further hearing, and on July 15, 1920, the Commission filed an opinion, wherein it stated, *inter alia*:

> "For the reasons stated we are of opinion that our finding that it is the duty of the shipper to load and unload live stock in the stockyards at Chicago was error, and it is therefore reversed. And we now find that it was the duty of the carriers to unload and load live stock at that point."
>
> "We further find that shippers who paid and bore charges for unloading and loading live stock at the stockyards in addition to the rates to and from the stockyards and who are parties of record herein have been damaged in the amount of such charges and are entitled to repara-

tion, with interest from the date of such payment. The exact amount of reparation due each shipper can not be determined on this record, and they should comply with rule V of the Rules of Practice." *Chicago Live Stock Exchange* v. *A. T. & S. F. Ry. Co. et al.*, 58 I. C. C. 164.

Thereupon the Exchange, on behalf of its members, whom it named, petitioned to have ascertained and awarded the amount of reparation to which each of such members is entitled. Under date of June 2, 1925, the Commission filed its report of the further hearing thereon, in which it found that the various named individuals, corporations, and firms constituting such members are entitled to reparation for the increased loading and unloading charges paid, and directed preparation of statements of the particular amounts, separated as to the participating carriers. 100 I. C. C. 266. Subsequent statements were filed with the Commission specifying the payments as to the various carriers, and the various members of the Exchange, and reparation was ordered accordingly.

During the course of the proceedings there was also filed a statement of the various shippers, and of the shipments to the different members, and of the carriers over whose lines the different shipments moved.

The reparation order directed the payments to be made to the several commission merchants, whom the Commission found to be entitled thereto, and the suit in the District Court upon the award was brought by these various commission merchants, corporations, firms, and individuals—103 of them.

Appellees contend that, while appellants physically paid the bills, they did not ultimately "bear" them, but that they were borne by the shippers of the live stock, and that therefore the several commission merchants had no such interest in the claims for reparation as entitled them to maintain suit thereon.

The general course of practice was this: The consignors shipped to the commission merchants. Upon arrival of the cars at the stock yards, the stock was unloaded by stock yard employes and placed in the pens of the different commission merchants, who generally sold the consignment the same day, receiving the purchase price before night. Upon arrival of the car the waybills, with the 25 cents unloading charge endorsed upon each, were delivered to the employes of the Stock Yard Co., who turned them over to a joint agent of the carriers and the Stock Yard Co. The agent checked the

weights and delivered the corrected bills to the Stock Yard Co., which then advanced to the line-haul carriers, for the consignees, the full amount of the bills, including the 25 cents additional unloading charge, and the carriers later paid the Stock Yard Co. its part of the charges.

The Commission merchants promptly accounted to their shippers for the amount realized from sale of their live stock, deducting commissions, freight charges, and other proper outlays of the commission merchants; and twice weekly the Stock Yard Co. collected from the commission merchants the amount of such advances to the carriers.

It would be seldom indeed that the commission merchants would advance their own money in payment of freight charges; but in case they did so they would be reimbursed promptly through realizing upon the shipment. To the extent that this may be an influential fact, it may be said that, in general, the commission merchants made no advances for the shippers, but paid the transportation charges out of the shippers' funds in their possession. But regardless of the precise order of the payments, it is clear that at the time of the proceedings for reparation the commission merchants had been long and fully reimbursed by the shippers for any such outlay, and it is not apparent how it can be said that the 25 cents charge was in fact "borne" by them, or by any one other than the shipper.

In the opinion of the District Court (*Adams et al.* v. *Mellon, Director General, et al.*, 39 F. (2d) 80) there was considered only the question whether appellants had such interest, or sustained such injury through payment of the increased charge, as entitled them to maintain this action. The opinion exhaustively and interestingly treats the question, and many cases are cited.

It appears that up to and including the time when the Commission made the decisions herein, reported at 52 I. C. C. 209 and 58 I. C. C. 164, it had held in a long line of cases that a consignee who did not actually bear alleged unlawful charges was not entitled to reparation therefor, notwithstanding he had in the first instance made payment to the carrier. That question was not discussed in either of those opinions; indeed, in that of 58 I. C. C. it was not undertaken to adjudge who in fact was entitled to the reparation, except to conclude that "shippers who paid and bore charges for unloading and loading live stock at the stockyards in addition to the rates to and from the stockyards and who are parties of record herein

have been damaged in the amount of such charges and are entitled to reparation, * * *." But in the decision made June 2, 1925, reported in 100 I. C. C. 266 (277) it was found that the various commission merchants therein named (who are the same as appellants here) "made the shipments" and "paid the charges thereon," and have been damaged and are severally entitled to reparation in their own names to the amount of the charges "as factors and agents for the shippers."

In the meantime (April 7, 1924) the Commission had decided the case of *Missouri Portland Cement Co.* v. *Director General*, 88 I. C. C. 492, wherein it reached a conclusion different from its theretofore long line of decisions, deciding that a consignee who had in the first instance paid an excessive transportation charge, though reimbursed, was a proper party to institute and maintain reparation proceedings. It appears that four of the Commissioners participating in the reparation award of 100 I. C. C. 268 did so "only as constrained thereto by the decision of the majority in *Missouri Portland Cement Co.* v. *Director General.*"

The action does not purport to be brought by appellants otherwise than in their respective individual capacities. Indeed, with attention directly challenged to their right to sue, it was contended by their counsel that they had such right, and while most likely the shippers would have the benefit of any recovery, this was wholly within appellants' volition.

In the District Court opinion Judge Woodward discusses the I. C. C. decisions, and many others, particularly *So. Pac. Co.* v. *Darnell-Taenzer*, 245 U. S. 531, and *L. & N. R. Co.* v. *Sloss-Sheffield*, 269 U. S. 217, reaching the conclusion that appellants in their own right may not maintain the suit.

Our examination of this question does not so entirely satisfy us of the correctness of the District Court's conclusion thereon as to justify our deciding the appeal upon ground so formal and technical, if a proper result may be reached upon the merits of the cause.

In considering appellants' motion made after judgment had been entered, for reopening the case and permiting amendment to be made to the declaration to the end that the plaintiffs may maintain the action as trustees for the various shippers, evidently the ground upon which the court had directed the verdict was again questioned. The court then said: "While the court, in its opinion, did not advert to the other points argued by the defendants, yet it seems to the court that on

other grounds, not referred to in the opinion, the judgment of the court may be maintained." In our view of the case there are other grounds on which the judgment may be rested.

It would greatly transcend the reasonable scope of such an opinion to present discussion of all of the many propositions put forward by the parties in the 700 printed pages of briefs and arguments submitted to us. Our further comments will relate to the merits of the reparation claims, without regard to the right of appellants to maintain the action therefor.

For the contention that the Stock Yard Co. could not lawfully impose on the shipper these increased charges, appellants place much reliance on *Covington Stock-Yards Co.* v. *Keith*, 139 U. S. 128. A decree was there affirmed finding that certain terminal charges at the Covington stock yards were for services which the carrier was bound to perform, and that a consignee would not be obliged to make use of those yards for unloading live stock unless such additional charge was waived; and in default of such waiver of charges the consignee might himself maintain suitable located pens at which stock consigned to him should be delivered by the carrier if he, the consignee, would keep a representative there to receive the stock. That action was begun in 1886—before the passage of the Interstate Commerce law—and of course was uninfluenced by published tariffs of a participant in interstate commerce, as is the case with the Chicago yard. The situation was entirely different, and in our judgment the case has little if any application here.

Since the passage of the Interstate Commerce law the right to make separate terminal charges seems clear, but with the limitation that such charges, if themselves reasonable, must not, in connection with all the other transportation rates, produce an unreasonable aggregate. *I. C. C.* v. *C. B. & Q. R. R. Co.*, 186 U. S. 320; *I. C. C.* v. *Stickney, et al.*, 215 U. S. 98.

United States v. *Union Stock Yard Co., supra*, also relied on to same effect, far from sustaining appellants' contention of the impropriety of the additional charge, in our judgment does the very contrary by holding the yards company to be an interstate carrier, under the jurisdiction of the Commission, and required to file tariff rates for that part of the service which it performs, and to collect and receive its rates while its published tariff remains in effect.

The absorption by the line-haul carriers of the originally filed rate of 50 cents and 25 cents for loading and unloading cars was not a gratuity on the part of the carriers. The com-

prehensive operations of the Stock Yard Co. greatly facilitated the handling of stock at Chicago for all the line-haul carriers. It undertook the service of rapidly unloading the cars coming into that great market. Its facilities made possible that elasticity of service which tended continuously to speed the unloading of live stock, regardless of variations in daily deliveries by the several carriers, and promptly to release the rolling stock for further movement.

Under the law the entire transportation service must be rendered at a reasonable rate, and the absorption of this loading and unloading charge was in fact a promulgation by the line-haul carriers of such a rate for the entire service as was then deemed reasonable. The result to the shipper would hve been the same had the line-haul carriers correspondingly reduced their rates, and not absorbed the loading and unloading charges.

In our judgment this absorption extended only to the amounts specifically named in the absorption clause; and, when the Stock Yard Co. promulgated its 25 cents increase, not only did the original absorption not include this increase, but the line-haul carriers definitely refused to absorb it; and when the carriers passed into Federal control the refusal to absorb was persisted in. But this left it none the less the lawful duty of the Stock Yard Co. to collect the increased charge of 25 cents upon each car, and failure to collect would have subjected that company to the penalties which the law prescribes.

The ineffectual attempt to cancel its published tariff left it in continuing force until, upon the close of Federal administration, section 418 of the Transportation Act definitely, and for the first time, required thereafter the line-haul carriers to load and unload all live stock offered for shipment.

If, when the cars reached the yard, and either before or after unloading, the Stock Yard Co. had demanded, and the consignees had paid, the 25 cents charge, we do not think it could be said that the line-haul carrier made the collection. But it seems to us that, notwithstanding the seeming circuity, it was the Stock Yard Co. which in effect collected the charge from the shipper or consignee. Upon arrival of the cars the Stock Yard Co., for and on behalf of the consignees, advanced the entire transportation charges, including the 25 cents, and turned the entire amount over to the line-haul carriers, which turned back to the Stock Yard Co. the 25 cents, together with the other yard charges. Whatever the form of the transac-

tion, it seems to us to have been, in essence, but a collecting of the 25 cents by the Stock Yard Co., which, under its published tariff, it was bound in any event to collect. No one was taken by surprise or deceived. The rate had been duly published and shippers or their representatives, the commission merchants, knew of this charge, and that the Stock Yard Co. would be obliged in some manner to collect it.

No contention is made that the charge itself was unreasonable, or that, taken in connection with the other transportation charges, the entire rate was unreasonable. The extent of the Commission's second conclusion was that the collection of the increased 25 cents was "an unlawful and unreasonable *practice.*" The finding that it was an unreasonable *practice* is not a finding that it was an unreasonable rate.

We judicially know, even if the record did not disclose it, that the cost of such service as was rendered at the stock yard had increased very materially by the beginning of Government control of the railroads, and this was the only increase in that rate since it was first fixed, many years before the World War began, notwithstanding the very substantial increase in transportation rates generally.

It seems from the record that in these tariffs themselves there is a background of authoritative rules and regulations which tend strongly to fortify the conclusion reached in the Commission's first decision, and our views as well.

It is stipulated by the parties that "all shipments of livestock involved in this suit consisted of carloads moved on carload ratings as ordinary livestock." It appears in Official Classification No. 44, under head of "Rules and Special Instructions":

> "Unless otherwise provided when property is transported subject to the provisions of the Official Classification, the acceptance and use are required, respectively, of the 'Uniform Bill of Lading,' 'Straight' or 'Order,' 'Export Bill of Lading,' 'Uniform Live Stock Contract' * *"

In the Uniform Live Stock Contract it is provided that:

> "Sec. 5. The shipper at his own risk and expense shall load and unload said live stock, * * *"

and that:

> "8. It should be understood in receiving Live Stock of any description for transportation, that the actual delivery does not commence until the stock has been placed in the car, and the responsibility of the Railroad Company shall cease upon the delivery of the car at the sta-

tion to which it is consigned. The consignor and the consignee are responsible for the loading and unloading of the same, the carrier assuming no liability whatever in regard to such loading and unloading."

These provisions were in force throughout the period of Federal control of railroads. Their existence is not disputed —only their application is denied by appellants.

There is significance in the fact that the Government, in taking over the transportation facilities, did not take over the stock yard. It is quite likely that this branch of the transportation was deemed in its nature quite separable from the rest, and that this highly specialized service had best continue to be carried on wholly by this agency of proved efficiency, an agency which was no doubt considered best suited to cope with the then unprecedented conditions which brought to the stock yard live stock in stupendous quantities, to feed a world at war. In those crucial months the basic live stock and packing industry could not well be hampered by tie-ups and confusions at the point of convergence in the great Chicago market of the many railroads bringing in live stock by the thousands of cars daily. The extraordinary conditions required extraordinary facilities to meet them. A unified and continuous unloading of these tremendous stock receipts, and their intelligent handling and disposal, manifestly conferred upon shippers as well as line-haul carriers, an advantageous service mor effective and satisfactory than if undertaken by each of the several line-haul carriers for the live stock which it carried.

That the transportation of live stock does not impose on the carrier all the responsibilities attendant upon the carriage of goods, is logical, and has been distinctly recognized. *No. Penn. R. R. Co.* v. *Bank,* 123 U. S. 727; *Covington Stock-Yards Co.* v. *Keith, supra.* The reasonable necessities of transportation at a given place or time may be entirely different from those of another place or time.

Harking back to the conditions under which this service was rendered, we cannot but conclude that the special benefit of the stock yard unloading service which then accrued to the shipper or consignee, at largely added cost to the Stock Yard Co., was properly the subject of an increased unloading charge outside of and beyond that which was otherwise included in the line-haul carriers' published transportation rates, very much as in "Dunnage Allowances, 30 I. C. C. 538"

referred to in the opinion herein of the Commission in 52 I. C. C.

Appellants earnestly urge that the collection of this charge was a tort, and that all participants therein were joint tort feasors. We cannot believe that the Stock Yard Co. committed a tortious act in collecting and receiving its tariff charge, the failure to collect and receive which would have been a breach of its statutory duty. Nor do we understand how the Director General of Railroads became a tort feasor through his continuing the prior practice of receiving from the Stock Yard Co. the entire rate, including the additional loading and unloading charges, and then turning back to the Stock Yard Co. that part of the total charge to which it was entitled. Particularly is this so when there is no pretense that either the charge itself or the entire rate including this charge was excessive. But even if technically to be considered a tort, under all the circumstances so far as the record discloses it was at most *damnum absque injuria.*

The judgment awarded costs against appellants. Concededly this contravenes the statute (§ 16 (2), Tit. 49, U. S. C.), which provides "that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal."

The judgment should be modified by eliminating therefrom the award of costs in the District Court. The District Court is directed to make such modification, and, as so modified, the judgment is affirmed, with costs of this appeal against appellants.

And on the same day, to-wit: On the 27th day of July, 1931, the following further proceedings were had and entered of record, to-wit:

Monday, July 27, 1931.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

George J. Adams and A. W. Kitchen, Copartners trading as Adams & Kitchen; John G. Adler and Alfred E. Adler, copartners trading as Adler Sons & Company; Alexander, Conover & Martin, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; John A. Babcock, an individual trading as John A. Babcock & Company; Fred L. Heyne and E. H. Baker, copartners trading as Baker, Heyne & Company; W. A. Peterson, trading as Bacon, Peterson & Company; Bowles Live Stock Commission Company, a corporation organized and existing under the laws of the State of West Virginia with its principal place of business at Chicago in the State of Illinois; E. C. Brown and Seth B. St. John, copartners trading as Brown-St. John Company; Thos. H. Brown; George M. Brownson and J. L. Ettlinger, copartners trading as Brownson & Ettlinger; Byers Brothers Company, a corporation organized and existing under the laws of the State of Missouri with its principal place of business at Chicago in the State of Illinois; Wm. B. Swiney, Chas. M. Swiney and Thos. E. Swiney, copartners trading as Swiney Bros., successors to Bunker & Swiney; J. B. Cahill, trading as J. B. Cahill & Company; Central Live Stock Commission Company, a corporation organized and existing under the

laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Ernest Clark and Louis Armbrecht, copartners trading as Clark, Armbrecht & Company; E. A. Clark, trading as Clark, Bowles & Company; John Clay, John G. Forrest, C. A. Kleman, F. H. Connor and C. L. Robinson, copartners trading as Clay, Robinson & Company; James R. Clegg, an individual trading as James R. Clegg & Company; A. M. Henneberry and N. W. Cochran, copartners trading as Cockran & Henneberry; W. P. Collings, trading as W. P. Collings & Son; Conklin Bros. Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; H. D. Copeland & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; J. M. Corrick; J. F. Cross and H. G. Sommers, copartners trading as Cross, Sommers & Company; A. B. Daniels; P. T. Dolan and Fred Ludeman, copartners trading as Dolan & Ludeman; J. M. Doud & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; S. S. Driver, an individual trading as S. S. Driver & Company; Chas. R. Beason and P. E. Moroe, copartners trading as Drovers Commission Company; J. W. Eastland, and individual trading as J. W. Eastland & Company; Guy Wheeler and T. K. Polley, copartners trading as Emmett, Wheeler & Polley; E. H. Kuenster, surviving partner of copartnership of Erwin & Kuenster; Evans, Snider, Buel Company, a corporation organized and existing under the laws of the Etate of Illinois with its principal place of business at Chicago in the State of Illinois; Filler Wilson & McClelland, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; O. D. Freeland and C. M. Godfrey, copartners trading as Freeland & Godfred; Fred Freeman, an individual trading as Fred Freeman & Company; P. J. Fitzgerald and G. S. Freeman, copartners trading as Freeman, Fitzgerald & Company; Wm. Gentleman, A. M. Gentleman, C. F. Gentleman and G. J. Gentleman, copartners trading as Wm. Gentleman & Sons; S. G. Gillogly, R. E. Gillogly, F. D. Gillogly and F. T. Gillogly, copartners trading as Gillogly & Company; Chas. E. Harding, trading as Chas. E. Harding &

Company; Hefner Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Geo. F. Hogan, trading as Geo. F. Hogan & Company; A. Warheimer, E. H. Ingwerson, J. H. Ingwerson, Dan R. Ingwerson, D. C. Mosier and A. C. Barroff, copartners trading as Ingwerson Bros.; Iowa Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; I. W. Knettle and Edwin Knettle, copartners trading as Knettle Bros.; Knollin Sheep Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; E. H. Kuenster, an individual trading as Kuenster Livestock Commission Company; A. J. Laberthe; L. S. Larrison, an individual trading as L. S. Larrison and Company; Lee Live Stock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; F. C. Ludeman, an individual trading as F. C. Ludeman & Company; McCausland, Hoag & Vaugh, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Wm. Mahoney; J. P. Maley and Harry L. Carpenter, copartners trading as Maley Carpenter & Company; John P. Martin, James G. Martin, George E. Martin and Wm. S. Burmister, copartners trading as Martin Bros. & Company; Miller White & Woods, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; P. T. Dolan, trading as Miller & Dolan; Frank R. Mullen, trading as Mullen Commission Company; Robert S. Murray, trading as Murray & McDowell; B. F. Hubbird, trading as Minteer Hubbird & Company; National Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Northwestern Livestock Commission, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois, G. W. Nixon, C. S. Horn and W. H. Chisholm, copartners trading as Nixon, Horn &

Chisholm; North American Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; Silas Palmer and W. H. Palmer, copartners trading as Silas Palmer & Son; T. B. Vincent and C. H. Boothroyd, copartners trading as Paris Commission Company; W. C. Patterson, trading as John Patterson & Son; W. A. Peterson and Wm. Turnbull, copartners trading as Peterson, Turnbull & Company; J. H. Piatt, trading as Abner Piatt & Company; Thos. K. Polley, trading as Thos. K. Polley & Company; R. H. Pritchard, trading as Pritchard Commission Company; Chas. R. Rice and Oscar A. Rice, copartners trading as Rice Bros; J. B. Roach and W. P. Roach, copartners trading as Roach Livestock Commission Company; Rosenbaum Brothers & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; F. W. Sheldon trading as F. W. Sheldon & Company; W. Harry Sherwood and Russell H. Sherwood, copartners trading as Sherwood & Son; J. Paul Shinn, Chas. H. Moberly and I. O. Fry, copartners trading as Shinn, Fry & Moberly, successors to Shinn, Fry & Company; James G. Shutter; W. R. Smith, J. C. Eastes and John Smith, copartners trading as W. R. Smith & Son; T. B. Stafford and A. B. Stafford, copartners trading as Stafford Bros.; Standard Livestock Commission Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; A. F. Starrett, Jr., O. A. Mathison, A. C. Granger and M. E. Peschong, copartners trading as Starrett, Mathison & Company; Chas. H. Stephens and J. A. Goble, copartners trading as Stephens & Goble; A. F. Stewart, trading as A. F. Stewart & Company; J. E. Strader and J. L. Strader, copartners trading as Strader Bros.; J. J. Sullivan and J. C. Sullivan, copartners trading as Sullivan Commission Company; A. Gilmore, C. L. Swanson and C. J. Castenholz, copartners trading as Swanson, Gilmore and Castenholz; Harry Thompson and C. N. Ball, copartners trading as Thompson & Ball; Thos. Tipton, E. M. Steck and W. P. Herrick, copartners trading as Tipton, Steck & Herrick; D. L. Trout and F. L. Trout, copartners trading as Trout Livestock Commission Company; G. B. Van Norman, an individual

trading as G. B. Van Norman & Company; Van Norman Lawler & Company, a corporation organized and existing under the laws of the State of Illinois with its principal place of business at Chicago in the State of Illinois; W. H. Walter, trading as Walter Bros.; A. A. Walters, C. A. Dunbar and J. H. Dunbar, copartners trading as Walter & Dunzar; L. B. Werden; W. W. Wilson and Chas. A. Wilson, copartners trading as W. W. Wilson & Company; Jet Wimp, trading as Jet Wimp & Company; Kay Wood and Chas. A. Wood, copartners trading as Wood Bros.; Curtis A. Wood and Walter R. Wood, copartners trading as Curtis A. Wood and Company; L. B. Yancey; and W. E. Young, trading as W. E. Young & Company

4462 *vs.*

To The Union Stock Yard & Transit Company, a Corporation, and Andrew W. Mellon, Director General of Railroads, as agent for the following corporations: The Atchison, Topeka & Santa Fe Railway Company; The Baltimore & Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Chesapeake and Ohio Railway Company of Indiana; The Chicago and Alton Railroad Company; Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago Junction Railway Company; Chicago, Milwaukee and St. Paul Railway Company, and H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers; The Chicago Rock Island and Pacific Railway Company; Chicago, Terre Haute & Southeastern Railway Company; The Cleveland, Cincinnati, Chicago, and St. Louis Railway Company; Grand Trunk Western Railway Company; Illinois Central Railroad Company; Indiana Harbor Belt Railroad Company; The Michigan Central Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; New York Central Railroad Company, New York, Chicago & St. Louis Railroad Company; The Pennsylvania Railroad Company; Pere Marquette Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Toledo, St. Louis & Western Railroad

Company, and J. Frank Johnson and Harry A. Dunn, Receivers, and Wabash Railway Company

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Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from The District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be modified by eliminating therefrom the award of costs in the District Court. The said District Court is hereby directed to make such modification, and as so modified the judgment of the said District Court in this cause be, and the same is hereby affirmed with costs in this appeal against the appellants.

And afterwards, to wit: On the fifteenth day of August, 1931, there was filed in the office of the clerk of this Court, a petition for a rehearing, which said petition for a rehearing is not copied here.

And on the same day, to wit: On the fifteenth day of August, 1931, there was filed in the office of the clerk of this Court a Proof of Service of petition for a rehearing, which said Proof of Service is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1930. April Session, 1931.

No. 4462.

George J. Adams & A. W. Kitchen, Co-partners trading as Adams & Kitchen, *et al.*, *Appellants*,
vs.
Andrew W. Mellon, Director General of Railroads, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
Hon. Charles E. Woodward, Judge Presiding.

RECEIPT OF COPIES OF PETITION FOR A REHEARING.

Receipt is hereby acknowledged from the attorneys for the petitioners in the above entitled of three (3) copies of the petition for rehearing filed by appellants in the above entitled cause on the 15th day of August, A. D. 1931.

Dated, this 15th day of August, A. D. 1931.

SILAS H. STRAWN,
RALPH M. SHAW,
FRANK H. TOWNER,
Counsel for Union Stock Yard & Transit Company, one of the appellees in the above entitled cause.

Endorsed: Filed Aug. 15, 1931. Frederick G. Campbell, Clerk.

And on the same day, to wit: On the fifteenth day of August, 1931, there was filed in the office of the Clerk of this Court an Affidavit of Mailing, which said Affidavit of Mailing is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1930. April Session, 1931.

No. 4462.

George J. Adams and A. W. Kitchen, Co-partners trading as Adams & Kitchen, *et al.*, *Appellants*,
vs.
Andrew W. Mellon, Director General of Railroads, etc., *et al.*, *Appellees.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
Hon. Charles E. Woodward, Judge Presiding.

AFFIDAVIT OF MAILING COPIES OF PETITION FOR REHEARING TO COUNSEL FOR APPELLEES.

State of Illinois, } ss.
County of Cook, }

FRANKLIN J. STRANSKY, being first duly sworn, on oath deposes and says that he is one of the attorneys for the petitioners in the above entitled cause; that on Saturday, the 15th day of August, A. D. 1931, he personally sent by regular United States Mail, with the proper amount of postage thereto affixed, properly addressed, to A. A. McLaughlin, of counsel for Andrew W. Mellon, Director General of Railroads, one of the appellees in the above entitled cause, at 1115 Bankers Trust Building, Des Moines, Iowa, the same being the business address of the said A. A. McLaughlin, two (2) copies of the petition for rehearing filed by appellants in the above entitled cause on the 15th day of August, A. D. 1931, and that on the same date he did personally send by regular United States Mail, with the proper amount of postage thereto affixed, properly addressed, to Sidney F. Andrews, of counsel for Andrew W. Mellon, Director General of Railroads, one of the appellees in the above entitled cause, at Hurley-Wright Building, Washington, D. C., the same being the business address of the said Sidney F. Andrews, two (2) copies of the

said petition for rehearing filed by appellants in the above entitled cause as aforesaid.

FRANKLIN J. STRANSKY.

Subscribed and sworn to before me, the undersigned Notary Public in and for the County of Cook and State of Illinois, this 15th day of August, A. D. 1931.

D. J. WARD
Notary Public.

Endorsed: Filed Aug. 15, 1931. Frederick G. Campbell, Clerk.

And afterwards, to wit: On the twenty-fourth day of August, 1931, there was filed in the office of the clerk of this Court an Answer to Petition for a Rehearing, which said Answer to Petition for a Rehearing is not copied here.

And afterwards, to wit: On the twenty-seventh day of August, 1931, there was filed in the office of the clerk of this Court a Reply to Answer to petition for Rehearing, which said Reply to Answer to Petition for Rehearing is not copied here.

And afterwards, to wit: On the twenty-second day of September, 1931, the following further proceedings were had and entered of record, to wit:

Tuesday, September 22, 1931.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. William M. Sparks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

George J. Adams and A. W. Kitchen, *et al.*
4462 *vs.*
Andrew W. Mellon, Director General of Railroads, etc.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the petition for a rehearing in this cause be, and the same is hereby denied.

It is further ordered by the Court that the mandate of this Court in this cause be, and the same is hereby stayed until the further order of Court.

It is further ordered that counsel for appellants file in this Court proof of the filing of the petition for writ of certiorari in the Supreme Court of the United States upon the filing of said petition in said Court.

And afterwards, to wit: On the fourth day of November, 1931, the following further proceedings were had and entered of record, to wit:

Wednesday, November 4, 1931.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding
Hon. Evan A. Evans, Circuit Judge
Hon. William M. Sparks, Circuit Judge
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal

George J. Adams & A. W. Kitchen, Co-partners trading as Adams & Kitchen, *et al.*,
4462 *vs.*
Andrew W. Mellon, Director General of Railroads, etc., *et al.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of the appellants herein by their counsel, it is ordered that the original exhibits in this cause now on file with the Clerk of this Court be withdrawn and transmitted by the Clerk under his proper certificate and the seal of this Court to the Clerk of the Supreme Court of the United States for the use of the Supreme Court in considering the appellants' petition for a writ of certiorari.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 381 to 410, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel and stipulations and orders relating to filing of briefs, the petition for a rehearing, answer to petition for a rehearing, and the reply to answer to petition for a rehearing) in the case of

George J. Adams and A. W. Kitchen, Co-partners trading as Adams & Kitchen, *et al.*,

Appellants,

vs.

Andrew W. Mellon, Director General of Railroads, as Agent The Union Stock Yard & Transit Company, *et al.*,

Appellees,

No. 4462, October Term, 1930, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 16th day of November, A. D. 1931.

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 25, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1646)